

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY

George C. James, Jr., Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF BOBBY RUSSELL,

APPELLANT

APPELLATE CASE NO. 2011-204866

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

IN THE MATTER OF THE CARE)
AND TREATMENT OF BOBBY)
RUSSELL,)

PLAINTIFF,)

TRANSCRIPT OF RECORD
#: 2011-CP-18-00394

November 1, 2011
Dorchester County Courthouse

BEFORE:

HONORABLE GEORGE C. JAMES, JR., PRESIDING JUDGE.

APPEARANCES:

Lloyd Flores, Esquire
Assistant Attorney General

Andrew Shepherd, Esquire
Attorney for Bobby Russell, Jr.

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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OPENING STATEMENTS OF MR. FLORES:

Mr. Flores: Your Honor may it please the Court?

The Court: Yes.

Mr. Flores: Mr. Shepherd, Mr. Russell. Good afternoon ladies and gentlemen. My name is Lloyd Flores. As I introduced myself to you earlier today, I'm employed by the office of the Attorney General. This case is about the protection of the citizens of Dorchester county in the State of South Carolina. As Judge James has indicated, this is a case brought under the Sexually Violent Predator Act. We are here today to answer one question. Is Bobby Russell a sexually violent predator? That's Mr. Russell, sitting next to Mr. Shepherd, his attorney. But what does that mean? How is a person a sexually violent predator? As the Judge stated, our legislature about thirteen years ago, passed the Sexually Violent Predator Act. It did so with two thoughts in mind; one that there exists, within our state, certain individuals who have mental abnormalities or personality disorders that make them more likely to commit acts of sexual violence. And second, that these individuals need treatment at a secure facility, because they are extremely dangerous individuals to the public. The State does contend that Mr. Russell is one of those

1 individuals. What I say during my opening statement
2 and my closing arguments, I may make mistakes in the
3 law and the judge, as he has stated so far, is the
4 judge of the law. He knows the law and if I make a
5 mis-statement of that law, I apologize because
6 that's a mistake, but whatever he says, is what the
7 law is. But my understanding of the Sexually Violent
8 Predator Act defines a person to be a sexually
9 violent predator in this way. That they one, have
10 been committed, or I'm sorry, they have been
11 convicted of a crime which has been defined as a
12 crime of sexual violence or a sexually violent
13 offense and two, that the person suffers from a
14 mental abnormality or personality disorder that
15 makes them more likely to commit another act of
16 sexual violence if not confined for long term
17 controlled care and treatment. So, the State today
18 must prove to you that Mr. Russell, one has been
19 convicted of a sexually violent offense and two,
20 suffers from a mental abnormality or personality
21 disorder that makes him more likely to commit
22 another offense. In support of our case, the State
23 would contend that Mr. Russell has, in fact,
24 committed a sexually violent offense and has been
25 convicted for those acts. In fact, we would contend

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that he has been convicted of three, separate, sexually violent offenses. Against, three separate, child victims. We will contend that the evidence will show today that he was convicted of sexually assaulting a four year old girl, a two year old girl and a five year old boy. That he pled guilty to each of these crimes. Now, I won't go into the details of these offenses at this time, but I must tell you, the details of these crimes will come out during testimony today, and these cases, by their very nature contain graphic, sometimes, things that we wish that we didn't have to speak about. So, I want to advise you that you will hear things today which you may not like to hear. Now, the second prong of the Sexually Violent Predator Act, as I stated, is that Mr. Russell also has to have a mental abnormality or personality disorder that makes him more likely to commit acts of sexual violence. Today, you will hear testimony from Dr. Peggy Wadman who is seated here in the front row of the courtroom. She is a psychiatrist who was ordered by the Court to conduct an evaluation into that very question. Does he have a mental abnormality or personality disorder? And is he more likely to commit acts of sexual violence? You will hear

1 today, and she will testify, that after evaluating
2 Mr. Russell, she did find that he does suffer from
3 Pedophilia and that he lacks a control over this
4 Pedophilia, such that he will commit other acts of
5 sexual violence. However, as the judge will instruct
6 you and has instructed you, you don't have to
7 believe one hundred percent of what she says. Listen
8 to her testimony, you will get to decide. You
9 yourselves will get to decide whether or not Mr.
10 Russell does lack that control. Listen to the
11 details, listen to the evidence as we present it.
12 Not just the evidence from the State, but any
13 evidence that Mr. Shepherd and Mr. Russell might
14 place before you. We thank you, the Attorney General
15 thanks you for being here today. This is a very
16 difficult question, these are not pleasant cases and
17 we thank you for your time and taking your
18 responsibility that our Constitution invests with
19 you in answering those questions of fact. Thank you.

20 The Court: Mr. Shepherd any statement at this time?

21 Mr. Shepherd: Yes sir.

22 The Court: Alright.

23 OPENING STATEMENT OF Mr. SHEPHERD:

24 Mr. Shepherd: Ladies and gentlemen, you heard the State.

25 What qualifies as a sexually violent predator under

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the act? Before we get into that, let's take a good look over here at Mr. Russell. He's sitting over there in his shackles and his prison garb. Sexually Violent Predator statute is a civil commitment. It is not a criminal trial, it is whether or not this individual should be locked away for long term care and treatment in a protected facility. The State is saying that Mr. Russell meets that criteria for two reasons. One, he pled guilty to three counts. Two, they have an expert who said he matches that criteria. A psychological, psychiatric perspective. What our evidence is going to show you is that the State, that now wants to put Mr. Russell into long term care and treatment for a period indeterminate, we have no idea when he'll get out except for when the physicians say they feel that he can be released. So the same State that is now trying to say that this is a dangerous, sexually violent predator, is also the same State that came to Mr. Russell when he faced a forty five year sentence or more and said, We'll let you out with three years credit for time served, subject to some probationary period, that you get treatment, out patient treatment. That you are subject to certain criteria that you cannot be around drugs, alcohol, minor

1 children. And what the State's expert does not do is
2 the State's expert doesn't look at those factors.
3 The factors of the probation, the factors of what
4 would be some level of control after Mr. Russell was
5 released. He maxed out in March of 2011. He pled
6 guilty in November 2010. Where is the disconnect
7 with the State to say that now he is a sexually
8 violent predator, he's got to be locked away for an
9 indefinite period of time when the State's willing
10 to come forward and say well, you've already served
11 this much time waiting on trial, now you can be
12 released, but as long as you're subject to these
13 terms of probation, it's okay. You're not a danger
14 at that point. But that's on the criminal side and
15 now we're on the civil side. But that's what our
16 evidence is going to show. Our evidence is going to
17 show that the State's expert and reliance on an
18 assessment done on Mr. Russell prior to his plea
19 deal. The State's expert relied on a, on a, on an
20 assessment that in numerous places found that Mr.
21 Russell was a low to medium risk, low to nominal
22 risk. Using all different batteries of assessment.
23 It finds that Mr. Russell is a current high risk.
24 We're going to put on testimony to explain why the
25 person that did that assessment felt that he was a

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1 current high risk. And you'll see, which is our goal
2 here, that Mr. Russell's probation, the terms of
3 supervision, the terms of out patient, mandatory
4 treatment are enough to protect us and to protect
5 society from anything that the State claims he is
6 going to go out and do. Your burden is going to be
7 beyond a reasonable doubt. As you listen to the
8 testimony, you got to listen, you got to think hard.
9 We've got a guy who the State said it's okay if he
10 walks, he served his time waiting on trial. It's
11 okay if he walks subject to the terms of his
12 probation and then they come back on the civil
13 commitment side and say we can lock him away and we
14 should lock him away for an indeterminate period of
15 time. They are going to argue, well it's typically
16 the standard length of time, but we don't know. It's
17 not measurable. We don't have an actual sentence. So
18 here we have a guy, sitting here who maxed out, who
19 should be home, serving under the terms of his
20 supervision, receiving the treatment that he was
21 ordered to take, the terms of his probation and he's
22 still sitting in jail, could be going on your
23 shoulders, for involuntary commitment for treatment,
24 because now he is a sexually violent predator.
25 Again, one that was freed when the State gave a plea

1 deal to walk in just a couple of months. That's the
2 stuff you're going to have to consider. You've got
3 to look for reasonable doubt. We're going to go
4 through Dr. Wadman, her assessment and her opinion.
5 We're going to go through Dr. William Burke's
6 assessment of Mr. Russell and as you listen to the
7 differences of opinion, they're going to agree in
8 some places, they're going to disagree in some
9 places. But you've got to look at what these
10 experts, the professionals have said, does it raise
11 a reasonable doubt? That's the State's burden. This
12 is a case of reasonable doubt. You're going to see
13 it. You're going to feel it. You're going to know
14 it. You're not going to feel comfortable with any
15 decision that you make in this case; you're always
16 going to look back and say did I do the right thing?
17 But when you tear apart and look at these
18 assessments and you think about, the two positions
19 that the State's now taking are has taken at this
20 point. There's some reasonable doubt. We just ask
21 you to keep an open mind. Look past the prison garb,
22 look past the shackles. That man is no longer
23 serving a criminal sentence. That's what we want you
24 to see is that he's still sitting there, he could
25 still be subject to being shackled under a civil

1 commitment process. Please think long and hard and
2 thank you for your time.

3 The Court: Alright, thank you. Mr. Flores you can
4 call your first witness..

5 Mr. Flores: Thank you Your Honor. The State would call
6 Dr. Peggy Wadman.

7 The Court: Alright, raise your right hand and state
8 your name please:

9 Dr. Wadman: Dr. Peggy Wadman.

10 The Court: Do you swear the testimony that you will
11 give to this Court will be the truth, the whole
12 truth and nothing but the truth, so help you God?

13 Dr. Wadman: I do.

14 The Court: Alright, please have a seat. If you would
15 please ma'am have a seat and give your full name to
16 the Court Reporter and spell your last name.

17 Dr. Wadman: It's Dr. Peggy Wadman. W-A-D-M-A-N.

18 DIRECT EXAMINATION OF DR. Wadman BY MR. FLORES:

19 Q: Good afternoon Dr. Wadman.

20 A: Good afternoon.

21 Q: Dr. Wadman, how are you currently employed?

22 A: I am currently employed as the forensic medical
23 director for the South Carolina Department of Mental
24 Health.

25 Q: And what professional degrees do you currently

1 possess?

2 A: I graduated with an undergraduate degree and then
3 went to medical school and did four years of medical
4 school and when we got out, or about to graduate, we
5 had to pick out a specialty, and I picked the
6 specialty of psychiatry. And then I went through
7 four years as psychiatric residency in adult in
8 general and then I did one more year of forensic
9 fellowship and after that I took examinations, oral
10 and written examinations and board certified in
11 general psychiatry and also forensic psychiatry.

12 Q: Doctor you used a lot of terms there and sometimes I
13 don't understand what they mean. What is the study
14 of psychiatry?

15 A: Psychiatry is the study of medicine and the brain
16 and so where as a cardiologist would be an expert in
17 heart, a urologist deals with anything pertaining to
18 the urinary tract, a psychiatrist actually practices
19 medicine, so I actually prescribe medication and I
20 do testing and order tests and labs and what not and
21 I look at different disorders of the brain and then
22 more specifically, to go into forensic psychiatry,
23 you look at matters that pertain to the brain and
24 the law. So the interface between psychiatry and
25 the law. So some of the things that a forensic

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1 psychiatrist does is they might, somebody might be
2 charged with a crime and the forensic psychiatrist
3 would look to see if they were suffering from a
4 mental disorder when they committed the crime and
5 how that may have played into the committing of that
6 crime and whatnot. So and then there's also
7 different situations like this, where we might
8 evaluate someone to see if we think that they meet
9 the qualifications for going into the sexual
10 predator program.

11 Q: Now, you briefly described the board certification
12 process. Is that something that every psychiatrist
13 or psychologist might be required to do?

14 A: If they want to be board certified and anymore, most
15 hospitals and most states are going to requirements
16 for board certification, generally when the boards
17 are offered, about half of the people will take it,
18 pass the boards.

19 Q: Doctor have you previously been recognized and
20 testified as an expert witness in forensic
21 psychiatry and the Court's of law in this state?

22 A: Yes I have.

23 Q: On approximately how many occasions have you done
24 so?

25 A: Probably more than a hundred times.

1 Q: And have all of your, out of all the times that
2 you've testified, have you always testified for the
3 State in these cases?

4 A: No, not always.

5 Q: Your Honor at this time we would ask that Dr. Wadman
6 be recognized as an expert in the field of forensic
7 psychiatry.

8 The Court: Any questions at this time?

9 Mr. Shepherd: No objections.

10 The Court: Alright, the witness is qualified as an
11 expert in the field of forensic psychiatry. Ladies
12 and gentlemen, if I can have your attention in that
13 regard for just a few minutes. Typically, there are
14 two types of witnesses who testify. They are lay
15 witnesses and there are expert witnesses. Typically
16 when a witness testifies that witness can only
17 testify to what they saw or heard or smelled or
18 touched. Again, those are called lay witnesses.
19 Those folks, those kinds of witnesses cannot give
20 opinions. There is an exception in our rules of
21 Evidence where someone who is qualified by
22 education, training or experience in a particular
23 field, that type of witness can give opinions and
24 can give the reasons for those opinions. That does
25 not mean, however, that you are bound by the opinion

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1 just because it comes from an expert. You are
2 required to evaluate and weigh this witnesses
3 testimony and give it the weight that you think it
4 deserves.

5 Q: Doctor, how did you become involved in this specific
6 case?

7 A: I received an order by the court to conduct an
8 examination and so every county, the judge, they'll
9 have, they'll have what's called a probably cause
10 hearing to see if there's cause to believe that the
11 person might be a sexual predator and then they're
12 evaluated by a psychiatrist who's appointed by the
13 court. So, I you know like in some cases where I
14 might be hired by either side and in this case I'm a
15 neutral party, appointed by the court.

16 Q: Doctor, what type of evaluation did you conduct of
17 Mr. Russell for this case?

18 A: I conducted a forensic evaluation that consisted of
19 meeting with him personally to do an extended
20 interview, also looking over all the legal documents
21 related to the case so those would be the arrest
22 warrants, the indictments, victim's statements,
23 statements or basically examinations by the doctors
24 who examined the children and in this case, we look
25 at his medical records and also any psychiatric

1 records that he might have. His prison records; he
2 was in prison a very short time, so there weren't
3 very many of those, so but I would look at those and
4 any other testing that was done by any other
5 consultants.

6 Q: Were you paid to conduct this evaluation?

7 A: No I was not.

8 Q: And as part of that evaluation you just mentioned
9 that you sat down and interviewed Mr. Russell. Would
10 you identify Mr. Russell?

11 A: Yes, he's sitting with his attorney at that table.

12 Mr. Flores: Your Honor we would just ask the record
13 reflect that Dr. Wadman identified Mr. Russell.

14 Q: Doctor, when you were asked to conduct an evaluation
15 in this type of case, what is it that you do
16 specifically? What is your protocol?

17 A: My protocol is to first review all of the available
18 records that I have and then I meet with the
19 respondent and evaluate them, and talk to them.
20 Sometimes I order more testing, sometimes if
21 testing's already been done that's available, I'll
22 review that. I'll just look through and make sure
23 that they meet the criteria or that they have the,
24 the legal convictions, which he did have three
25 convictions for lewd act on a minor. And then form

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1 an opinion and write a report.

2 Q: Doctor, as part of this evaluation, how many
3 occasions did you have a chance to sit down and
4 speak with Mr. Russell?

5 A: I spoke with him one time. I met with him on March
6 25, 2011.

7 Q: In addition to meeting with Mr. Russell, what was
8 the type of information that you received to conduct
9 your evaluation for this case?

10 A: Well, I, I received his, all of the legal documents,
11 which would include the arrest warrants, the
12 victims' statements, statements from the parents,
13 medical exams of the children, I look, received a
14 report from the Dr. William Burke who had done a lot
15 of testing on Mr. Russell before he was actually
16 convicted of the crimes. And did some assessments of
17 my own.

18 Q: Is this the type of information that is typically
19 and reasonably relied upon by other experts in your
20 field?

21 A: Yes, it is.

22 Q: At the time you conducted your interview and
23 evaluation, was there any information you could not
24 obtain?

25 A: No, not at that time.

1 Q: And did you consider and rely on all of this
2 information you listed for the jury just a moment
3 ago and upon your interview with Mr. Russell in
4 rendering an opinion in this matter?

5 A: Yes, I did.

6 Q: Doctor, why did you rely on information regarding
7 Mr. Russell's criminal history in reaching your
8 opinion?

9 A: Well, a person's past is probably the best predictor
10 of what somebody will do in the future. They call
11 that the single, most powerful predictor. If a
12 person has committed sexual offenses in the past,
13 then he's more likely to commit sexual offenses in
14 the future. And also to see if there was just
15 general criminality, general anti-social behavior,
16 any crimes of violence in his past, anything like
17 that.

18 Q: Now, you've already testified that Mr. Russell had
19 been convicted of three counts of committing a lewd
20 act on a minor. Are these offenses, to which Mr.
21 Russell has convictions, are they listed as sexually
22 violent offenses?

23 A: Yes, they are.

24 Q: If I may approach the witness Your Honor?

25 The Court: Yes sir.

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1 Q: I'm going to hand you what's been marked as
2 Plaintiff's exhibit number 3.

3 A: Yes.

4 Q: I'm going to ask you to just review that for a
5 moment. Doctor, can you describe what those
6 documents are?

7 A: This is an indictment for lewd act for committing or
8 attempting a lewd act on a child under sixteen. This
9 was dated, this was on or about November 2nd, 2008.
10 It involved a four year old girl and this is the
11 sentencing sheet that goes with that.

12 Q: And how do you know that those are, in fact, true
13 copies?

14 A: They have the stamp and they're certified.

15 Q: Doctor, as part of your evaluation, did you learn
16 the details underlying this particular offense?

17 A: Yes, I did.

18 Q: And could you relay, could you tell the jury what
19 happened in this offense, in this particular
20 offense?

21 A: This particular offense involved a four year old
22 child that lived next door to Mr. Russell. The
23 records indicated that some time between two a.m.
24 and three thirty a.m. on November 2, 2008, he
25 entered the home of his neighbor and sexually

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1 assaulted the four year old girl by performing oral
2 sex on her and placing his penis against her vaginal
3 and/or her anal area. The victim told her mother
4 that Mr. Russell had woken her by placing his hand
5 over her mouth and the records documented that he
6 then touched her vaginal area with his hand and his
7 mouth and exposed himself to her, by placing his
8 penis on her vagina. She told her mother that she
9 told him no several times and he kept doing it until
10 she started crying and then he left her room. Once
11 he left the room, there are various accounts that
12 were given by Mr. Russell. He basically said that he
13 was discovered in the house and he told the child's
14 father that he was just there to apologize to him
15 for an incident that happened a few days earlier; it
16 was somewhere around two thirty in the morning. And
17 the victim's father made him leave the house and in
18 the meantime, the little girl was crying and told
19 her mother that he had molested her. They were there
20 in the house still and they heard a sound coming
21 from the girl's bedroom and the father went into the
22 girl's bedroom and saw Mr. Russell coming back
23 through the bedroom window after he'd already been
24 escorted out of the house and the victim's father,
25 of course when he approached Mr. Russell, went

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1 outside in the yard and shoved him out the gate of
2 the property and watched him go home.

3 Q: Now Doctor, according to the sentencing sheets, did
4 Mr. Russell go to trial on this charge?

5 A: He was, he actually took a plea bargain is my
6 understanding. He was originally charged with
7 criminal sexual conduct with a minor and burglary
8 first degree and he pled to lewd act.

9 Q: At this time, Your Honor, we would move, the State,
10 the Plaintiff's exhibit 3 into evidence.

11 The Court: Any objection?

12 Mr. Shepherd: No sir.

13 The Court: Alright.

14 (Plaintiff's Exhibit Number 3 was put into evidence)

15 Q: If I may approach again Your Honor? Doctor Wadman,
16 I'm going to hand you what's been marked Plaintiff's
17 exhibits 1 and 2 and ask that you review these.

18 A: Okay, these, these are sentencing sheets, okay these
19 are, these are arrest warrants, sentencing sheets
20 and indictments for two, two more victims. The first
21 set occurred in November 2008. These occurred in May
22 of 2009. One was a two year old girl and one was a
23 five year old boy.

24 Q: And is there any notation to indicated the
25 authenticity of these documents?

1 A: Yes, they're certified copies.

2 Q: Doctor, would you please describe for the jury the
3 details underlying these specific acts?

4 A: Okay, regarding the situation with these, Mr.
5 Russell was out on bond: He was out of jail on bond.
6 He was wearing an ankle bracelet and he was supposed
7 to be living with his uncle and he had a curfew to
8 follow. Apparently, he had some type of falling out
9 with his uncle and over the curfew, he wasn't making
10 the curfew or coming in on time and he was either,
11 either left the house or was kicked out of the house
12 and he eventually ended up living with the, the
13 parents or at least the mother and the boyfriend of
14 these children here. So, he moved into their house
15 with an ankle bracelet and he had already been
16 released on bond for the pending charge of criminal
17 sexual conduct with a minor. And shortly after he
18 was there at the house, it was discovered that the
19 little girl told her mother, after the mother had
20 found child pornography on her computer and, and
21 became very concerned, because the mom told police
22 that it wasn't hers and it didn't belong to her
23 boyfriend. And so, she asked her daughter had
24 anyone been doing anything to her. The daughter said
25 that Mr. Russell had been digitally, not in the

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1 words of the two year old, but basically digitally
2 penetrated her vagina and then the little boy also
3 said that he had fondled him on at least one
4 occasion and the mother called the police and
5 subsequently there was an investigation and the
6 children were taken to the special children services
7 where they conduct the interview and the examination
8 and he was arrested. I believe the original charge
9 was, one of the original charges was criminal sexual
10 conduct with a child. He ended up pleading guilty to
11 two counts of lewd act. One for the two year old and
12 one for the five year old.

13 Q: Your Honor at this time we'd offer Plaintiff's
14 exhibits 1 and 2 into evidence.

15 Mr. Shepherd: No objection.

16 The Court: Alright.

17 (Plaintiff's One and Two were marked)

18 Q: If I may approach? Doctor, what is significant
19 about these offenses with regard to your opinion?

20 A: Well, what was concerning about Mr. Russell and his
21 behavior, there are sex offenders who certainly
22 score higher on the risk assessment similar to mine,
23 but what was significant about Mr. Russell was that
24 incredible level of impulseitvity and inability to
25 control his behavior. The fact that he would molest

1 a little four year old girl and then the father
2 confronting him in the house and kicked him out of
3 the house and then going into the child's bedroom
4 and finding him coming back through the window. That
5 shows a real level of impulseitivity and inability
6 to control his behavior. Then he got out on bond and
7 had an ankle bracelet and moves into the home of a
8 couple who have two small children and then molests
9 those two children. And so, the, the lack of
10 judgment, the lack of ability to say no to his
11 impulses, no to even understand how really crazy
12 that is. To be out of jail on a bond with an ankle
13 bracelet and move into the house with two young
14 children there and then also molest those two
15 children. So I just think, given that and plus the
16 fact that the other risk factors, he has risk
17 factors of substance use and abuse makes him likely
18 to sexually re-offend. That's what we're looking at,
19 somebody who is likely to sexually re-offend.

20 Q: I want to talk to you a little bit about risk
21 factors you just mentioned. What are risk factors?

22 A: Risk factors are just different things that make a
23 person more likely or less likely to do something.
24 So, in other words, what we do in this business is
25 we have different assessments that we use to

1 determine how many risk factors does this person
2 have. So in his case, risk factors for sexual
3 offenders would be how many sex offenses have they
4 been convicted of in the past. You know, the more,
5 the more they've been convicted, the higher risk
6 they would be in that sense. The literature,
7 scientific literature, when we study things like
8 this shows if somebody molests a male child they're
9 at higher risk; if the child was unrelated to them,
10 they're at higher risk; if, if, if any of the
11 children were strangers, they're higher risk. None
12 of his were strangers. If they have prior non sexual
13 violence convictions they're higher risk; if they
14 never lived in a committed relationship with a, you
15 know, a woman or man or whatever, a loving
16 relationship for two years, less than two years or
17 never, that's a higher risk. Mr. Russell's never
18 been married. He's never lived with a woman
19 continuously in over two consecutive years. The
20 literature shows that that makes him a higher risk.
21 The younger somebody is when they sexually re-offend
22 the higher risk they are. So those are the types of
23 things that we look at.

24 Q: Doctor, as you were describing the information you
25 relied on in rendering your opinion in this matter,

1 the police reports, the documents which you've just
2 described, you also mention an assessment or
3 assessments that were done. Was there an assessment
4 that you conducted specifically?

5 A: Yes. I, I code something called the Static 99
6 revised and what that is, and again, in this field
7 of sexual offender research, they come up with
8 different instruments to see how much of a risk is
9 this person to re-offend. They'd pull out their own
10 assessment, their own actual assessment and they'd
11 start asking you questions and they'll say have you
12 ever, do you smoke? Have you ever been a smoker?
13 Have you ever had cancer? Has anyone in your family
14 ever had cancer? Do you drink accessibly? You know,
15 how many medications are you on and the more you
16 answer yes to those, you know, if you answer yes I'm
17 a smoker, my family smokes, I grew up in a smokey
18 household, you know, I drank a fifth a week, you
19 know, I, you know, I don't exercise, all these,
20 they're going to go well, yeah, maybe we can insure
21 you, but it's going to cost you an arm and a leg
22 right? Because you're a high risk, you're a higher
23 risk for the insurance company. That's the same
24 thing that we do with sex offenders. The higher they
25 score on these instruments, the higher risk that we

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1 think that they are.

2 Q: And you scored one of these assessments for Mr.
3 Russell?

4 A: Yes, I did.

5 Q: Okay, what did that assessment tell you?

6 A: The assessment told me that he is in the moderate
7 high risk category. He's not the highest, he's not
8 the highest risk category, but this is just one of
9 the things that we look at. A lot of the people that
10 we commit to the program will score very, very high
11 on these instruments. He scored moderately high. But
12 as I said before, this is just one part of the
13 assessment. What concerned me so much about Mr.
14 Russell was the, the risk taking and the high level
15 impulseitivity and lack of judgment that he showed.
16 Not just in committing his first sex offense that we
17 know about, but the two that followed and so based
18 on that, that was the most concern for me.

19 Q: Doctor, I recall you stating in your testimony that
20 you relied upon another evaluation and some
21 assessments or tests that were conducted by Dr.
22 William Burke.

23 A: Yes, I did.

24 Q: Why did you, why did you rely on those particular
25 tests and that evaluation?

1 A: On Dr. Burke's evaluation?

2 Q: Yes.

3 A: Well. Dr. Burke did something called a PPG. That's
4 a test, that's a little more evasive. What it does
5 is they hook up a gauge, it's called a strain gauge
6 to a man's penis and there are other tracers; they
7 trace their respiratory rate and there's something
8 in the seed that tells whether they're trying to
9 suppress an erection and then basically, they show
10 them and the person sees and hears images of
11 children, adults, males, females, you know, some
12 corrosive, some just normal and they kind of measure
13 their sexual response to those. And the reason that
14 I thought that Dr. Burke's report was significant,
15 even though he had only given it to, in draft form,
16 what I noticed first was that at the top of the
17 assessment it said this is a draft. You know, it
18 wasn't a final copy, so I actually called him on May
19 6th, 2011 and went through the report with him,
20 because I wanted to clarify what were his final
21 conclusions versus just what were the preliminary
22 findings that he had and one of the things that
23 struck me in his evaluation on the PPG, was that the
24 highest, the highest sexual arousal Mr. Russell had
25 was to a female child in the persuasive. Meaning

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1 it's not necessarily voluntarily persuasive, you
2 know, just normal voluntary and persuasive and then
3 coercive, it gets more violent. But that was his
4 highest level of response. He also responded to
5 adult females and teenage females, which is normal.

6 Q: Doctor, was there any other information upon which
7 you relied in rendering your opinion in this matter?

8 A: No, you know, other than the information in Dr.
9 Burke's report. He found, Dr. Burke found the same
10 thing that I found in the interview, is you know,
11 one of the things, one of the tests showed that he
12 had a high level of inattention and impulseitivity
13 and that clearly came across in the interview and it
14 clearly came across in his recorded history,
15 especially the history of the crimes.

16 Q: Doctor, based on your examination of Mr. Russell,
17 the review of his records, all these factors that
18 we've been discussing over these last few moments,
19 did you render an opinion to a reasonable degree of
20 medical certainty as to whether Mr. Russell has a
21 mental abnormality or personality disorder?

22 A: Yes I did.

23 Q: And what was that opinion?

24 A: I diagnosed him with pedophilia and non exclusive
25 type. The reason I did that is because he's also had

1 sexual relationships with adult females. That in
2 itself is not unusual. Most people who do molest
3 children, they don't necessarily just prefer
4 children, they have relationships with adults and
5 also they can have deviant sexual arousal to
6 children. I also diagnosed him with polysubstance
7 dependants alcohol and cocaine, also a history of
8 ecstasy abuse. He reported that he use to abuse
9 ecstasy almost every weekend for a three or four
10 year period. The same with cocaine and he also had a
11 history of a head injury, which was concerning to
12 me.

13 Q: Doctor, can pedophilia be treated?

14 A: Yes, it can.

15 Q: Is it a life long condition?

16 A: Yes, if somebody has pedophilia, it's life long.
17 There's no cure for it, but there is treatment.

18 It's someone like alcoholism, someone who is an
19 alcoholic or alcohol dependant, they never really
20 get over that. They'll always be susceptible to it,
21 but they can live a life of sobriety. Most
22 pedophiles actually don't offend against children.
23 They live with it, they control it, they can control
24 it, but a lot of times they have to learn in
25 treatment how to control it.

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1 Q: Now, Doctor, you've mentioned that Mr. Russell has a
2 history of drug and alcohol abuse. Did drugs and
3 alcohol play a role in his committing the offenses
4 that he did?

5 A: He told me that he had not used alcohol or drugs for
6 the two years prior to his arrest. The father of one
7 of the victims, the night that he broke into the,
8 into the home and molested the four year old said
9 that he was drunk. So, you know, based on what Mr.
10 Russell told me, he did this sober. Based on what
11 the father of one of the victim's said, he was at
12 least intoxicated on the one child. But there's no
13 indication he was intoxicated when he committed the
14 acts against the other two children.

15 Q: Doctor, at this time, do you have an opinion as to a
16 reasonable degree of medical certainty as to whether
17 Mr. Russell's pedophilia effects his emotional or
18 volitional capacity so that he is pre disposed to
19 commit future, sexually violent offenses?

20 A: Yes, I do.

21 Q: And what is that opinion?

22 A: I believe he is pre disposed.

23 Q: And why is that?

24 A: Just based on his history, and his risk factors and
25 the behavior that he's already exhibited and

1 especially the behavior that he exhibited when he
2 was out of jail on bond with an ankle bracelet on.

3 Q: Doctor, do you have an opinion to a reasonable
4 degree of medical certainty as to whether Mr.
5 Russell has the propensity to be dangerous and
6 commit future sexual violent offenses?

7 A: Yes, I believe that he does have that propensity.

8 Q: Doctor, do you have an opinion to a reasonable
9 degree of medical certainty as to whether Mr.
10 Russell's propensity to commit future sexually
11 violent offenses is of such a degree that it poses a
12 menace to the health and safety of others?

13 A: Yes, I do. I believe it does.

14 Q: Doctor, do you have an opinion to a reasonable
15 degree of medical certainty as to whether Mr.
16 Russell has serious difficulty in controlling his
17 behavior and his propensity is to be dangerous?

18 A: Yes, I think that he does have serious difficulty
19 controlling his behavior.

20 Q: Doctor, do you have an opinion to a reasonable
21 degree of medical certainty as to whether Mr.
22 Russell's Pedophilia makes him likely to engage in
23 acts of sexually violence if he is not confined in a
24 secure facility for long term control, care and
25 treatment?

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1 A: Yes, I do think he has the propensity towards that.

2 Q: And Doctor, at this time do you have an opinion as
3 to a reasonable degree of medical certainty as to
4 whether Mr. Russell meets the legal criteria to be
5 found to be a sexually violent predator?

6 A: Yes, I believe that he meets the legal criteria.

7 Q: Doctor, if the jury were to find Mr. Russell to be a
8 sexually violent predator, and commit him, would he
9 be offered treatment for his Pedophilia?

10 A: Yes, he would. He would go to a treatment program
11 that's operated by the South Carolina Department of
12 Mental Health. It is, the program is separate from
13 the prison system, but it is located within the
14 fence of the Broad River Road Correctional
15 Institution. Its employees though and security are
16 through the Department of Mental Health and Office
17 of Public Safety. And then they go into the program
18 for treatment and once a year they have a review to
19 see whether their condition is so changed that
20 they're considered to be safe to be at large.

21 Q: Beg the Court's indulgence.

22 The Court: Alright.

23 Q: Doctor, that's all the questions I have for you at
24 this time. Please answer any questions that Mr.
25 Shepherd might have for you.

1 The Court: Alright Mr. Shepherd.

2 CROSS EXAMINATION OF DR. WADMAN BY MR. SHEPHERD:

3 Q: Hi Doctor Wadman. Now Dr. Wadman, you said that you
4 did meet with Bobby Russell as part of your
5 evaluation?

6 A: Yes, I did.

7 Q: Okay. You met with him for a total of about two
8 hours?

9 A: I believe it was two hours, yes.

10 Q: And you reviewed evidence provided to you by whom?

11 A: By, well the package comes from our Paralegal. I
12 don't know exactly where she compiles that from, but
13 it has all of his police documents so it would have
14 come from Dorchester County police. I can tell you,
15 from the Department of Corrections.

16 Q: Uh-huh.

17 A: Copies of his records there, copies from the
18 children's services and Palmetto Health.

19 Q: Okay, was there any effort on your part to obtain
20 information from say, Mr. Russell's family or
21 defense attorneys?

22 A: Yes. I actually interviewed some other over the
23 telephone and I got some information from his, from
24 his criminal attorney.

25 Q: Okay, did any of the information from Mr. Urekco's

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1 office make it into your report?

2 A: Yes it did. It, what they sent me was a copy of a
3 report from, they sent me a copy of Dr. Burke's
4 report.

5 Q: Uh-huh.

6 A: They sent me a copy of some prescriptions for
7 medications. They sent me a copy of the report from
8 SLED, a lab report.

9 Q: Uh-huh, did you obtain any evidence that might
10 suggest that no DNA was found on, Mr. Russell's DNA
11 was never found on the first child in your report?

12 A: They sent some type of lab report from SLED, but I
13 didn't really look at it too closely, because he had
14 already confessed to that crime.

15 Q: Did you receive any information to indicate that Mr.
16 Russell's were never found on that window that he
17 was allegedly pushed out of?

18 A: Let me look through this real quick. No, I don't
19 see that.

20 Q: Okay and did you receive any information regarding
21 Mr. Russell having taken a polygraph test with
22 regards to the allegations that were against him to
23 which he ultimately pled?

24 A: He's mentioned that he had taken a polygraph
25 examination, but I do not have the results from

1 that.

2 Q: Okay, if the polygraph came back in his favor, would
3 that have effected your report to some degree?

4 A: Again, the fact that polygraphs I don't think are
5 admissible in criminal court, I guess, I don't know,
6 I don't know the rules of the law on that, but the
7 fact that he confessed to the crime and pleaded
8 guilty to it, I weighed that more heavily.

9 Q: Okay. Did you receive any reports regarding child
10 pornography on the computer that would verify that
11 the child pornography was on the computer several
12 months before Mr. Russell ever lived in that home
13 with those two children?

14 A: I didn't receive any reports on the status of the
15 pornography.

16 Q: Okay. When you conducted the Static 99, you found
17 that Mr. Russell was in the moderate to high
18 category, correct?

19 A: Yes.

20 Q: Okay, can you explain to us how your Static 99
21 differs from that of Dr. Burke on who's report you
22 did rely on?

23 A: Well, when I spoke with Dr. Burke and we actually
24 briefly discussed that, he acknowledged at that time
25 on the phone I believe that he, he wasn't aware of

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1 his relationship status and again, Dr. Burke's
2 report was just a draft. You know, it wasn't, it
3 wasn't his final copy. So I think at that point he
4 hadn't gone through the records or verified whether
5 he had in fact, had the two year plus relationship,
6 which he had not. So I think that was where our
7 scores differ.

8 Q: Okay. Alright, did you take into account any dynamic
9 factors like the effect of treatment and supervision
10 with regards to the Static 99?

11 A: He hadn't had any treatment.

12 Q: Did you offer any opinions as to how his score might
13 be effected through treatment and proper
14 supervision?

15 A: No, one of the things, you know, on his sentencing
16 sheet it did say that, you know, he had been on
17 probation for five years, he couldn't have any
18 contact with children. You know, it went through a
19 number of things that he would have to meet before
20 he could get out of or he could be released on
21 probation and I certainly look at that. I think it's
22 a good, you know, it does something that can work in
23 somebody's favor, but the reason it didn't work in
24 his is because he was released on bond for his first
25 offense against a child and he promptly broke the

1 condition of his bond and moved into a house with
2 two young children in it and then sexually offended
3 against those two children. So, it really wouldn't
4 matter that he were out on probation or out on bond,
5 because he already proved, at least to me, that he
6 couldn't be trusted to maintain those conditions of
7 probation.

8 Q: And your basing that solely off the fact that he
9 pled guilty?

10 A: Yes.

11 Q: Okay. Alright, not on any incidents of the child
12 pornography, not being on the computer when he was,
13 or being on the computer before he ever lived in the
14 house?

15 A: Well, I actually I, let me re-state that. I base it
16 not just on the fact that he pleaded guilty, but
17 also on the statements of the children, of three
18 different children; a two year old, a five year old
19 and a four year old to trained interviewers of
20 children who have been molested and the children, I
21 read through those interviews and they, they all
22 maintained in their own words, as only young
23 children can do, that he molested them. So, based on
24 all of that I believe that he did molest the
25 children.

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1 Q: Do you have any thoughts with regards to the other
2 battery of tests performed by Dr. Burke that placed
3 him in the low nominal risk category for violent
4 recidivism?

5 A: I remember that he was in the highest risk category
6 when they scored them all together; that's all I
7 remember. But again, I don't know how Dr. Burke
8 scores those, but I understand that he's here and
9 will probably be able to answer those questions for
10 you.

11 Q: Well, Dr. Wadman, you relied on that for your
12 report.

13 A: No, I relied, what I, what I said was I, I looked at
14 his PPG results, a lot of times I look at the PPG.
15 When he says that, he said that the, that combining
16 all of the tests that, which Dr. Burke says and
17 again, this is his report, he then places him as a
18 high current risk priority for sexual violent
19 recidivism. I'm reading that right here. Places him
20 as a high risk priority.

21 Q: After a combination of all tests, correct?

22 A: Yeah.

23 Q: Did all of those tests find him in a low to medium
24 or low to nominal?

25 A: You know, again, I did not cite those in my report.

- 1 I would have to go back through his report.
- 2 Q: Okay.
- 3 A: He can certainly, you know, talk about that.
- 4 Q: Okay. Did you make an reference in your report to
- 5 Dr. Burke's finding that Bobby Russell does not show
- 6 an interest in sadistic behavior?
- 7 A: I doubt, where did you find that? I don't see it.
- 8 Q: I can reference you to, it would be page eight.
- 9 A: Page eight?
- 10 Mr. Flores: Which report is Mr. Shepherd referring to?
- 11 Mr. Shepherd: Dr .Burke's.
- 12 Mr. Flores: Dr. Burke's. Okay.
- 13 A: Again, where is that?
- 14 Q: May I approach the witness Your Honor?
- 15 The Court: Yes.
- 16 Q: Dr. Wadman, I'm going to show you this. That is
- 17 respondent's Two.
- 18 A: This is South Eastern Assessments, Inc. This is a
- 19 report by Dr. Burke.
- 20 Q: Okay.
- 21 A: It says draft.
- 22 Q: Okay, is that the report that you relied upon?
- 23 A: That's the report that I got the PPG from, the
- 24 results from, yes.
- 25 Q: Okay, did you look at any other information in that

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1 report?

2 A: I looked at it, but I don't use these assessments
3 and so, you know, I'm sure Dr. Burke will be able to
4 explain them to you.

5 Q: Dr. Wadman why would you not use assessments?

6 A: I don't use these particular assessments.

7 Q: What assessment did you use?

8 A: I use the Static 99 R.

9 Q: And that's it?

10 A: Yes and we use the PPG and I looked at his PPG
11 results.

12 Q: Okay and again I'm going to reference you to page
13 nine of, actually it would be faxed page nine. It
14 would be under issues to be addressed of the Able
15 Screen Assessment.

16 A: Okay.

17 Q: Okay. Does that refresh your memory with regards to
18 whether or not Dr. Burke stated that he does not
19 show an interest in sadistic behavior?

20 A: Yes, it says that here, but again, just to let you
21 know, that I did not go over this specifically with
22 him. We don't use the Able NR at our forensic
23 evaluation service and so this is a draft report.
24 There were many errors in this report and when I
25 went over them on the phone with Dr. Burke, he

1 clarified for me what I was interested in here about
2 the PPG and the end where it said that he does have
3 sexual arousal. So you'll have, since it's a draft
4 report, and I never received a copy of the final
5 report, Dr. Burke would have to be the one to
6 clarify whether that's a true statement or a mis-
7 statement.

8 Q: I'm just asking you if you looked at that?

9 A: No, because we don't use the Able.

10 Q: Okay, did you look to Dr. Burke's finding that
11 stated that Mr. Russell does not appear to have
12 persistent sexual attraction to children?

13 A: Yes, that was and I believe in that conclusion, I
14 asked him about that and he said that the next
15 sentence says that Mr. Russell failed to demonstrate
16 significant sexual arousal and Dr. Burke told me on
17 the phone that that was a mis-statement, because
18 again, this was a draft report and he had not gone
19 through it and issue his final report. So basically
20 said that he did demonstrate significant sexual
21 arousal.

22 Q: Dr. Wadman, Dr. Burke states in his report, that you
23 relied upon in preparing your report, he states,
24 page ten, Bobby Russell does not appear to have a
25 persistent, sexual attraction to children. Did you

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1 review that?

2 A: Yes I did.

3 Q: Okay.

4 A: And I spoke with Dr. Burke about his report and he
5 said that he had made several errors in his report
6 and this was not a final report. This was a draft
7 report and so you would need to speak with him about
8 his report and whether that's a true statement on
9 his part or not. I do not know, because this is only
10 a draft report.

11 Q: So the only assessment that you conducted on Bobby
12 Russell was the Static 99?

13 A: The only one I specifically conducted myself, yes.

14 Q: What other assessments were conducted?

15 A: The PPG report conducted by Dr. Burke, which we
16 would have done in our own lab, Dr. Burke did his
17 and showed that was sexually attracted to female
18 children.

19 Q: Well, Dr. Wadman, why would you not have done your
20 own PPG?

21 A: We many times send our respondents down to Dr. Burke
22 for him to do them. So, we actually have a contract
23 with Dr. Burke to do our own PPGs and so there would
24 be no reason for him to do two PPGs. He'd already
25 done a PPG.

1 Q: Dr. Wadman, with a man's life on the line, you don't
2 see there's any reason for you to have another PPG
3 done?

4 A: No, because what they find is if you do serial PPGs,
5 if you do them too close together, you can actually
6 get different results because they can learn the
7 test. So, in other words, you can't, you can't just
8 keep repeating the test. You do the test, you get
9 the results that you get, then you score them.

10 Q: Well, Dr. Wadman, what's too close in time?

11 A: Well we, you know, we don't, he had already had the
12 PPG; it showed what it showed and ...

13 Q: When did he do the PPG?

14 A: Well I don't know exactly because he said that
15 there's a note by the date that says it's an error,
16 so I don't know when he did the PPG.

17 Q: Before I believe you stated it was 2009, correct?

18 A: Let me look on the report. Yeah, I said I reviewed
19 the report and it was June 26, 2009.

20 Q: So in two years time it would have been too soon to
21 do another PPG to determine whether or not this man
22 should be locked up potentially for the rest of his
23 life?

24 A: Well, he's not going to be locked up for the rest of
25 his life and what I'm recommending, you know, this

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1 is what I'm recommending and that based on his, the
2 crimes that he pled guilty to, verified by the
3 statements of little children, that he needs
4 treatment. He has not had any treatment. He denied
5 that he did any of this to them. That he came up
6 with different stories, you know. I read, I read the
7 account that he gave to police. It differed
8 significantly from what he told me. He's given
9 different accounts. I believe that he needs
10 treatment; once a year they come up for a review and
11 when they, when their condition is so changed that
12 they are safe to be at large, then they are released
13 from the program. This is not a life sentence. This
14 is a yearly, an annual review that they get and he's
15 already shown that he can't be trusted to comply
16 with terms of his bond. I don't see why we would
17 think that he could be trusted to comply with terms
18 of his probation.

19 Q: Okay. Is it your opinion that pursuant to the terms
20 of his probation that he successfully complete Dr.
21 Burke's treatment program? Is it your position that
22 he cannot get the same treatment with Dr. Burke that
23 he would receive at the Department of Mental Health?

24 A: I have never been to Dr. Burke's treatment. I
25 understand that it's very good. Dr. Burke is very

1 well respected in his field. Like I said, we
2 contract with him to do our PPGs. I've talked to him
3 on the phone at times about different cases, so I
4 have no doubt that he could get good treatment from
5 Dr. Burke. The problem is is that he didn't comply
6 with the terms of his, when he was out on bond. He
7 had an ankle bracelet on and he was still out
8 selling drugs, driving around with criminals, by his
9 own admission, out selling drugs, driving a known
10 criminal around in a car, not complying with the
11 terms of his curfew and molesting two more children.
12 So I don't see how it would benefit the community by
13 taking that chance and that's what I'm saying. I
14 don't think it's worth the chance that we would be
15 taking were we to release him. I think that he needs
16 in patient treatment, not out patient.

17 Q: How many hours of in patient treatment does a
18 typical inmate or civilly committed individual
19 receive?

20 A: It depends on whether, it depends on their level,
21 their status level in the program. Some of the
22 residents, once they've shown that they can be
23 trusted to follow the rules and participate in all
24 of the activities, do their assignments and what
25 not, they're actually, they go to a program over in

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1 another building, another separate area. They go
2 over there twice a week all day.

3 Q: Okay. Dr. Wadman, you said you relied upon the PPG,
4 correct? Done by Dr. Burke?

5 A: I, it was one part of the, one part of the
6 information that I looked at.

7 Q: So you relied upon Dr. Burke's PPG in reaching your
8 determination?

9 A: His one part of the information, yes.

10 Q: Alright. Can you tell me what the highest levels
11 were on that PPG?

12 A: The highest levels of what?

13 Q: What did he show the most response to?

14 A: He showed the highest response to female children.

15 Q: Dr. Wadman, didn't he show that just to one?

16 A: It's a stimulant, what's called a stimulate.

17 Q: Uh-huh.

18 A: And that was the highest response that he showed.

19 Q: Okay.

20 A: What they measure, what they do is they measure
21 different sets and so they'll have, you know, it
22 will be a scene and the child talking and what not
23 and then they'll measure their response to that. It
24 was the, his highest one was to the child, female
25 persuasive.

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1 Q: Okay, what were the next four highest results?

2 A: He, to the adult female, persuasive and then to the
3 adult female coercive, that would have been more
4 like the violent type, not violent, basically
5 coercing someone into doing something they don't
6 want. And then the last one was to the adolescent
7 female persuasive. So ...

8 Q: Which trial was that Dr. Wadman?

9 A: That would have been, you asked me for the highest
10 ones, so that would have been the fifth one up from
11 the bottom.

12 Q: Okay, Dr. Wadman ...

13 A: That, that, that again, like I said before, it's
14 normal, it's considered normal for a male to be, so
15 have sexual arousal to both adult and even
16 adolescent females on the PPG. So the deviant
17 arousal he had was to the child female, coercive or
18 persuasive and that was the highest one that he
19 had.

20 Q: Okay. Now did you also look at Dr. Burke's report
21 where he stated that Mr. Russell does not appear to
22 have chronic sexual interests and deviant sexual
23 stimuli?

24 Mr. Flores: What page? What page is that on?

25 Mr. Shepherd: That would be page, that would be faxed

1 page twelve.

2 A: And again, I just want to say this again, that I
3 spoke with Dr. Burke about his report. He told me it
4 was only a draft and he hadn't finished it and he
5 did say that he had made, that this was not, you
6 know, these were not necessarily his conclusions. He
7 did say that, his report here for instance says that
8 Mr. Russell failed to demonstrate significant sexual
9 arousal to multiple stimulus sets and when I talked
10 to Dr. Burke he said no, that's an error. He did
11 demonstrate significant arousal. So, with Dr. Burke
12 being here and he would be the one to be able to
13 tell you what were the final conclusions of his
14 report.

15 Q: Okay, alright and Dr. Wadman, again, you met with
16 Bobby Russell for two hours and you only conducted
17 the Static 99, correct?

18 A: Well, again, that's one part of my, it's just one,
19 it's one part of the evaluation. It's the entirety
20 of the information. It's looking at all the legal
21 records, looking at the victim's statements, looking
22 at the victim evaluations by the interviewers,
23 looking at the witness reports, talking to him, it's
24 all of that put together.

25 Q: You counted against Bobby because he denied having

1 committed the crimes correct?

2 A: No.

3 Q: You didn't find that his denial of having done it
4 was a higher risk category?

5 A: No, almost everybody I evaluate denies that they did
6 what they had done.

7 Q: And in this particular instance, you did not go and
8 look for any of the evidence or any other supporting
9 documentation that would have supported the finding
10 that he did not, in deed, commit these crimes?

11 A: Well, he's not my role in this to be a police
12 investigator. My role is to look at the information
13 as given to me and the test that I conduct and the
14 interview with, with the respondent and to come to
15 reach some type of opinion, which is what I did.
16 Now, I, I did look at the children's statements, the
17 parents statements, I did look at their interviews
18 with the forensic interviewer, the child forensic
19 interviewer and see, you know, what they said. And
20 all of the children said that they were molested by
21 Mr. Russell. It's very rare that somebody in this
22 position comes in and tells me exactly what they did
23 with a child. By the time they get to me, they don't
24 want to go into the program and so probably most of
25 them say that they didn't do it. That's not

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1 unusual.

2 Q: So, any evidence that may have existed to support
3 any inference that he did not actually do it you
4 didn't see it?

5 A: Well, all of that would have been presented or
6 should have been presented at the criminal case of
7 his. This is a civil commitment process; this isn't
8 a criminal trial. You know, he basically pled
9 guilty to three counts of lewd act on a minor. If he
10 didn't, if he didn't commit those crimes, then that
11 should have been taken up at that time by his
12 attorney.

13 Q: Okay, no further questions.

14 The Court: Re-direct?

15 Mr. Flores: Just one question Your Honor. It will be
16 just one question Your Honor.

17 The Court: Okay.

18 RE-DIRECT EXAMINATION OF DR. WADMAN BY MR. FLORES:

19 Q: Mr. Shepherd alluded to Dr. Burke's report in a
20 statement that said Mr. Russell did not show any
21 sadistic sexual deviancy. Is it common for
22 pedophiles to have sadistic fantasies as well?

23 A: It just depends on, that would depend. You know,
24 what I've found with the pedophiles that I have
25 evaluated and treated is that most of them are not

1 sadistic; they don't have to be, because it's very
2 easy to coerce a child into sexual activity. They
3 are very impressionable, they're very trusting, they
4 you know, frightened into not telling. So, there's
5 really not a lot of sadistic, you know, most of them
6 are not.

7 Q: Thank you Your Honor. Thank you Dr. Wadman.

8 The Court: Alright you can step down. Alright we're
9 going to take a break in a moment. Do you have any
10 other witnesses?

11 Mr. Flores: We don't Your Honor.

12 The Court: Alright, so the State rests?

13 Mr. Flores: The State would rest at this time Your Honor.

14 The Court: Alright ladies and gentlemen we're going
15 to go ahead at this time and take a recess. The
16 State has rested, which means it has presented all
17 the evidence that it's going to present in its case
18 in chief. Please go to your jury room for just a few
19 minutes. You may not discuss the case. Thank you.

20 (Jury exits courtroom for break 3:27)

21 The Court: Alright we'll take a break right now and
22 come back.

23 Mr. Flores: Just one matter Your Honor. Dr. Wadman is
24 here under subpoena and if it's alright, we'd like
25 to release her from that subpoena.

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1 The Court: Alright ladies and gentlemen, we are ready
2 to move forward with the trial of this case. The
3 State has presented the evidence that it is going to
4 present in its case in chief. Mr. Shepherd will be,
5 will the respondent be presenting any testimony?

6 Mr. Shepherd: Yes he will Your Honor.

7 The Court: Alright, call your first witness.

8 Mr. Shepherd: At this time I'd like to call Dr. William
9 H. Burke.

10 The Court: Alright, put your left hand on the Bible
11 and raise your right hand. Your name sir?

12 A: William Burke.

13 The Court: Do you swear the testimony you will give
14 this court will be the truth, the whole truth and
15 nothing but the truth, so help you God?

16 A: I do.

17 The Court: Alright, have a seat sir and state your
18 name and spell your last name.

19 A: William Henry Burke. B-U-R-K-E.

20 The Court: Alright.

21 DIRECT EXAMINATION OF DR. BURKE BY MR. SHEPHERD:

22 Q: Dr. Burke if you could, inform the jury where you
23 currently are employed.

24 A: Well, two places. I'm in private practice, South
25 Eastern Assessments, specializing in assessment and

1 treatment of individuals with sexual disorders or
2 convicted of any sexual crimes. I'm also an
3 associate professor at the Medical University of
4 South Carolina in the forensic psychiatry department
5 primarily providing research data regarding six
6 different research projects regarding human sexual
7 behavior that I'm involved in.

8 Q: And Dr. Burke, what is the extent of your training?

9 A: Well my education is I was a cadet at the Citadel,
10 degree in psychology and then I've got a Master's
11 degree in counseling and then I got a PHD from the
12 University of South Carolina in counseling. I've
13 been personally trained by everyone who has
14 authored the test that I administer on psycho-sexual
15 evaluations with the exception of MMPI but I
16 received specific training for that as well. I'm
17 certified to administer two psychologist
18 instruments, the Able Assessment ...

19 Q: Dr. Burke, how long have you been performing this
20 type of work?

21 A: I've been involved with the assessment and treatment
22 of sexual offenders since 1981. I guess by 1995 I
23 finished my doctorate degree. I was essentially full
24 time working with individuals with sexual disorders
25 and they'd been convicted of sex crimes.

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1 Q: Dr. Burke have you had the opportunity to represent
2 both Plaintiff's and Defendant's?

3 A: Yes sir.

4 Q: At this time I'd like to move to qualify Dr. Burke
5 as an expert.

6 The Court: In what field?

7 Mr. Shepherd: In ...

8 Dr. Burke: I think it would best be in the assessment and
9 treatment of individuals with sexual disorders.

10 The Court: Alright, any questions at this time or
11 any objections from the State?

12 Mr. Flores: No objection Your Honor. The State would find
13 Dr. Burke well qualified in that area.

14 The Court: He's qualified ladies and gentlemen of the
15 jury as an expert in the field of assessment and
16 treatment of individuals with sexual disorders. The
17 same instruction I gave you earlier applies. You can
18 consider this testimony of this witness just like
19 you would give any other witness and give it the
20 weight you think that it's entitled to. Alright, you
21 can continue.

22 Q: Dr. Burke have you had the opportunity to assess
23 Bobby Russell, Jr. ?

24 A: Yes sir.

25 Q: Do you recall when you may have assessed Bobby

1 Russell, Jr.?

2 A: Well, it's been a few years. I think, I don't know
3 the exact date. It was prior to his pleading guilty
4 to lewd act charges that was referred to by Dr.
5 Wadman.

6 Q: Okay, Dr. Burke I'm going to hand you a copy of a
7 document and ask you to identify that for us please.

8 The Court: What number?

9 Mr. Shepherd: That is respondent's 2.

10 A: Well this is a copy, of the draft report that I put
11 together for Mr. Russell's attorney. And I'd like to
12 make a statement about that to clarify the process
13 of this, if that would be alright?

14 Q: Please if it would help.

15 A: When I'm given a task of evaluating someone prior to
16 a criminal case, often times a defense attorney will
17 hire me and with the understanding that what we,
18 that any work I produce is under the attorney/client
19 privilege, so that way the attorney can chose to use
20 the information or not use the information. And
21 although there's some low risk things on the
22 evaluation, I think that are going to be discussed,
23 there was some things that particularly the PPG test
24 that was not favorable and so his attorney chose not
25 to use this report. So I wanted to be clear this

1 of it, may not be appropriate at this stage.

2 Mr. Shepherd: Yes sir.

3 The Court: But I'll let you question the witness. Mr.
4 Flores I'm not going to rule on your objection yet,
5 because the report itself may speak of things that
6 you don't cover. Alright?

7 Mr. Flores: Thank you Your Honor.

8 The Court: Okay, anything else before the jury comes
9 in?

10 Mr. Shepherd: I have nothing further.

11 The Court: Alright, you can bring them back.

12 (Jury enters courtroom 3:55)

13 The Court: Okay, you can continue.

14 Q: Dr. Burke, is this the draft report that you created
15 for Bobby Russell?

16 A: Yes sir.

17 Q: Okay. Do you recall when you conducted this
18 examination?

19 A: I don't; I believe June 26, 2007.

20 Q: Okay, alright Dr. Burke is it true that this
21 particular process cannot necessarily predict future
22 behavior with absolute certainty I suppose?

23 A: Ask me again?

24 Q: Can this type report, will this process with regards
25 to these evaluations, Dr. Wadman's evaluation, any

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1 type of assessment, can it determine to a degree of
2 certainty whether or not somebody is going to commit
3 a future act?

4 A: Well I think the State of the science right now is a
5 place where, I think you can make a judgment if
6 someone is going to be more likely or not, so I
7 interpret, my interpretation is more likely than not
8 is more than fifty percent and I think if an
9 assessment is done in a proper manner, I think, I
10 believe clearly you can, with a high degree of
11 certainty, predict future behavior. Having said
12 that, there is room for error and that error may be
13 anywhere from ten to fifteen percent according to
14 the research.

15 Q: Yes sir.

16 A: But to answer your question, yes I think you can.

17 Q: Okay. And is it able through these types of
18 assessments to determine past behavior?

19 A: Is it able to determine past behavior? It, the
20 process, what we are given is some information about
21 a crime that's been alleged to have been committed
22 and we go from there with some standard protocol as
23 indicated for the association for the treatment of
24 sexual abusers. That's the national, international
25 organization that has standards of care that you

1 must follow in an evaluation and so, I think again
2 beyond that fifty percent, likelihood, the
3 evaluation can, can help you determine if a past
4 behavior is appropriate.

5 Q: Okay. Now, Dr. Burke, when you examined Bobby
6 Russell, you performed several tests. Can you tell
7 us what tests you performed?

8 A: Well, like I mentioned earlier, there's some
9 standards of care. One is Actuarial scale that Dr.
10 Wadman already talked about and that's the Static 99
11 and that gives you a baseline to start with. So for
12 instance, if a Static 99 says this individual is a
13 medium risk, what you then do is you do the rest of
14 the assessment and you add or subtract to that level
15 of risk, depending on what you find. And so the
16 Stable 2007 it predicts risks over a year, three
17 hundred and sixty five days. The Static 99 predicts
18 risk over fifteen years okay? Then the acute
19 measurement, which was the next one, predicts risks
20 over the next forty five days. So there's protocol
21 for that. Then there's the hair --- checklist which
22 is a measurement which includes interview and
23 document review where you find if an individual
24 personality, his presentation and history matches
25 those of a known individuals who have a diagnosis of

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1 psychotherapy. Psychopaths are really, really
2 dangerous people, so they're the kind of people who
3 commit multiple murders or rapes or combination of
4 both and can have a good night's sleep and not worry
5 about it, have no remorse or guilty or anything.
6 So, then we have the Able Assessment which is an
7 instrument that has three hundred and sixty pictures
8 of men, women and children in bathing suits. An
9 individual looks at those pictures twice and
10 responds to questions about that. One is how old do
11 you think this person is and another is are you
12 sexually attracted to this person? What happens
13 when you're looking at that your viewing time being
14 calculated or tabulated and then placed into
15 different categories. Two four year olds, sixteen
16 year olds, adolescents and adults. So that sexual
17 interest, which may be the interest and how long you
18 view the picture, which is different than sexual
19 arousal. Sexual arousal can only be measured in a
20 laboratory with a Penile plethysmography for men.
21 And that's where there's a gauge that's placed on
22 the penis, that we don't do. They put it on
23 themselves in a room with the door shut. We never
24 see them naked or anything like that. We do it with
25 as much dignity as possible. And it measures the

1 blood flow through the penis. So when they see a
2 picture of a child in conjunction with a story about
3 something happened to that child sexually, we can
4 get an accurate reading if they're becoming sexually
5 aroused to that. So arousal and interest are two
6 different, two different things. Then you have, you
7 should do some personality assessment and that's
8 what the Minnesota Multi phrase Personality is for.
9 The Burke sexual fantasy scales, that's something
10 I've developed fifteen years ago and is used in
11 about ten programs across the United States. It
12 quantifies sexual thoughts and fantasies with their
13 level of awareness regarding their behavior. It
14 simply means it helps quantify that they do this
15 with forethought or not. Did they commit a crime
16 against a person and did they think about it or was
17 it impulsive? Were they fantasizing about it before
18 they do it? That's one thing. And then the Conner's
19 Continuous Performance test is a measure, is a
20 computer driven test where you have to hit the space
21 bar when different letters of the alphabet flash on
22 and off the screen for a fifteen minute period.
23 Which sounds really simple, but it's really complex
24 and it's a really good indicator of attention
25 deficit disorder or brain damage. The first line of

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1 picking up a hint if somebody has brain damage or
2 not. So, those sorts of things are part of the
3 standard care that you should follow in this kind of
4 assessment, so that's what we did here.

5 Q: Dr. Burke did you perform the Static 99 on Bobby
6 Russell?

7 A: I did.

8 Q: Okay and Dr. Burke what was your findings with
9 regard to the Static 99?

10 A: Okay I scored him a three which is in the medium low
11 category which predicted that he would, it predicts
12 over a fifteen year period recidivism so this
13 predicted there's a nineteen percent chance he
14 would be re-arrested for sex crimes in the future.

15 Q: And is that in the low medium risk?

16 A: Correct.

17 Q: Okay and did you take into account any dynamic
18 factors like the effect of treatment and
19 supervision?

20 A: Well, like I stated earlier, you start with a Static
21 99 and you get a baseline and then dynamic factors
22 are things that you can change. So, certainly issues
23 around sexual arousal can be controlled and
24 quantitatively changed to some degree and that's
25 taken into account. But I guess you're asking

1 specifically about that one line about the
2 predictive score does not take into account dynamic
3 factors like that effect of treatment. So, that does
4 not take into account, I did not address whether
5 treatment would be effective or not or to what
6 degree. And again, I didn't until the final report.

7 Q: Right, right. Do you think in making a determination
8 as Dr. Wadman did, from your perspective that it
9 would be necessary to consider the effects of
10 treatment and supervision?

11 A: I, please ask again.

12 Q: Sure. Do you think from your perspective, based on
13 Dr. Wadman's report, where she did not take into
14 account dynamic factors like treatment and
15 supervision in her assessment or risk, do you feel
16 that those are areas that should be addressed to
17 some degree when looking at a person's risk
18 assessment and what could potentially mitigate?

19 A: Well, I think it should be considered. I'm not sure
20 that's what she was tasked with. I think her task
21 was rather he met a specific criteria and what we're
22 talking about is a therapeutic prevention. So, I
23 mean, in all fairness to her, I don't think she was
24 asked that. I think she was asked does he met this
25 legal criteria.

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1 Q: Okay. In looking at Mr. Russell's scores on the
2 Static 99, with regards to risk categories for
3 violent crimes, sexual recidivism, what did you
4 find?

5 A: Well the Static 99 it was medium low with nineteen
6 percent chance he would re-offend sexually and a
7 thirty percent chance he would re-offend with a
8 violent crime which that includes sexual crimes.
9 Violent crimes like criminal domestic violence,
10 assault and battery, murder.

11 Q: And static 99, that's over a longitude ...

12 A: Fifteen year period.

13 Q: Okay on the Stable 2007, did you find that Bobby
14 Russell was a low nominal risk for sexual
15 recidivism.

16 A: Right, low nominal risk. The Stable 2007 is made up
17 of a series of questions about substance abuse,
18 emotional stability, problem solving skills, sex
19 drives, so he scored ten out of twenty six points.
20 That ended up being a low nominal risk. It was
21 predicted that he would be an 8.8 percent chance he
22 would re-offend over two years. And 12.6 percent
23 chance he would re-offend.

24 Q: And all of those are low values, correct?

25 A: In the low category.

1 Q: Can you explain to the jury the Able Assessment and
2 how Mr. Russell scored.

3 Q: As I stated a while ago, the sexual interest test
4 where they look at three hundred and sixty pictures
5 of men, women and children and their viewing time is
6 calculated per category. The results indicated that
7 he, you know, he viewed the adult, Caucasian female
8 and adolescent Caucasian females to a level of
9 statistical significance meaning he looked at it
10 quite a bit longer than he did the children or the
11 male pictures. And then there's also some pictures
12 in the Able assessment that depict people being
13 beaten and suffering and tied up and things like
14 that and so it's believed that if you view those
15 considerably longer than the other categories, then
16 you're more likely to be sexually interested in
17 sadistic behavior meaning sadistic behavior is if
18 you get pleasure, in some cases arousal from
19 suffering, seeing other people suffer.

20 Q: And is responding significantly to adult, Caucasian
21 females and Adult Caucasian, adolescent females,
22 excuse me, is that normal for a heterosexual male?

23 A: That's considered normal, it doesn't sound normal,
24 but the pictures of adolescent females are sixteen
25 years of age and they have breast development and

1 curvature of their body. They look like Brittany
2 Spears in the Pepsi commercial, the Super Bowl, you
3 know, that kind of thing, you know there's
4 certainly, you can tell they're teenagers, but
5 they're, you know, they're developed, they're right
6 on the, knocking on the door of being an adult
7 woman.

8 Q: Dr. Burke on these objective measures of the
9 client's awareness of sexual interest in adult and
10 adolescent females there are three main questions
11 addressed by the assessment. How did Mr. Russell
12 respond to those questions?

13 A: Well, that, that's not how he responded to
14 questions. That's his ...

15 Q: What was your determination?

16 A: That's his viewing time you know. It's, it's a
17 physical measure. It's not ...

18 Q: Okay.

19 A: He's not saying yes I'm attracted or he actually
20 does say that, but that's not what that's
21 addressing. He doesn't appear to have persistent
22 sexual attraction to children as evidenced by his
23 viewing of the adult and adolescent females quite a
24 bit longer and doesn't have sexual interest in
25 sadistic or behavior. Now, the probability of past

1 child sexual abuse, what Dr. Able did was he got a
2 bunch of men, he got a hundred men who had never
3 committed a sex crime and they passed a polygraph
4 that they had never molested a child and he gave
5 them this test. And then he got about a hundred men
6 who had been convicted of sex crimes against
7 children, but they said they were innocent and they
8 failed a polygraph, okay? He gave them this test and
9 from that he came up with an equation, so when an
10 individual takes this test, it, you fall into one
11 category or the other is what the hope is. Now, in
12 statistics though, there's always, there's always
13 sort of a no man's land and in this particular
14 equation, there's a six percent window of no man's
15 land. What that means is if your score, if your
16 scores falls within that six percent, he can't say
17 you're in the offender class who failed the
18 polygraph. Said they were innocent and oh, by the
19 way got convicted or other innocent, that they're
20 innocent, never been accused and passed a polygraph,
21 so in this case Mr. Russell fell right in the
22 middle. The equation couldn't place him in an
23 offender or non offender class.

24 Q: Dr. Burke, is it your opinion that in order to make
25 a determination from your perspective of whether

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1 Bobby Russell should be committed or civil
2 commitment pursuant to these proceedings, that it
3 would be necessary to re-assess him under these
4 tests?

5 A: Me personally?

6 Q: Yes sir.

7 A: Right, my wife got subpoenaed on Saturday for me to
8 be here, as I was out of town and yeah, I think
9 ethically I would have to do a whole other
10 evaluation and, cause things change over the years,
11 so I'm not prepared to state either way.

12 Q: Throughout the bulk of your assessment, Bobby
13 Russell persistently, with the exception of the PPG,
14 scored in the low to medium, low nominal risk
15 categories, correct?

16 A: You're talking about risk category, well, having a
17 high risk category on static. But that would be
18 acute in Static 99. I'm sorry, Static 99 was stable.
19 He was in the low to medium range.

20 Q: And with regards to the high current risk, what
21 types of factors fall into that?

22 A: Failure to comply with supervision and sexual
23 interests, I'm sorry, sexual arousal to females are
24 the equation as are the propensity to use alcohol or
25 drugs through the things that over a forty five day

1 period of time would make him more likely to re-
2 offend.

3 Q: So when we talk high risk, we're talking a forty
4 five day period of time after release?

5 A: Right.

6 Q: A person such as Bobby Russell subject to the terms
7 of his probation mandating substance abuse
8 counseling, random drug screening, treatment through
9 you, that is a condition of his probation that he
10 successfully complete your program. Would those
11 sorts of actions on his part have some bearing on
12 whether or not he should be civilly committed?

13 A: Is the question ...

14 Q: Well, let's look at it ...

15 A: ... whether I could treat him or not?

16 Q: Whether you could treat him with regards to this
17 high current risk category, which is where that
18 forty five day window; it's my understanding
19 justified longevity. He's a lower risk, but for
20 that short acute time frame, subject to the terms of
21 his probation, would you be able to adequately treat
22 a person like Bobby Russell?

23 A: Well, I think, I think there's really mutually
24 exclusive points, because I've got, I work out of
25 four offices and I'm personally responsible for two

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1 hundred and fifty, roughly two hundred and fifty
2 convicted sex offenders in seventeen counties in
3 South Carolina and practically all the federal cases
4 in Columbia are, I take what I do very seriously and
5 I do a really good job with polygraphing them and we
6 think have the capability to give medication. Having
7 said all that, you know, we treat individuals like
8 this all the time, but I think your question, I'm
9 not sure what the question is.

10 Q: Could you treat Bobby Russell through your program?

11 A: Well sure.

12 Q: Okay and if Bobby Russell were not to comply with
13 the terms of your treatment program, would there be
14 any hesitation on your part to report it to the
15 Court?

16 A: No, no problem at all.

17 Q: Now, Dr. Burke, you do recommend through this draft
18 assessment, there was a recommendation for a
19 polygraph. Are you aware of whether a polygraph was
20 performed on Mr. Russell?

21 A: I was not until I heard earlier.

22 Q: Okay and so, none of those types of, none of that
23 evidence really made it into your assessment of Mr.
24 Russell. We sort of stopped with this basic
25 assessment and evaluated him in your office correct?

1 A: Well, I mean we stopped short of doing a full, him
2 signing it going over it and handing it in.

3 Q: So, we would need, we would need another battery of
4 tests?

5 A: If you're asking me whether I can say whether he
6 meets the statute or not ethically, I mean I haven't
7 talked to the gentlemen in a number of years. Found
8 out over the weekend I was going to be here today,
9 sort of embarrassed that this even got out of the
10 attorney's office. It really shouldn't have gotten
11 out. It was attorney client privilege, but I can't
12 say one way or the other, because I'm not prepared
13 and I don't have all of the information.

14 Q: And is it, is it normal for an individual to, strike
15 that. I think I'll just stop right there. Thank you
16 Dr. Burke.

17 The Court: Mr. Flores?

18 Mr. Flores: Yes Your Honor.

19 CROSS EXAMINATION OF DR. BURKE BY MR. FLORES:

20 Q: Good afternoon Dr. Burke.

21 A: Hey.

22 Q: I don't have many questions for you. I just want to
23 clarify some questions about this report. This is a
24 draft, is that correct?

25 A: That's correct.

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1 Q: And there are a few errors?

2 A: There' a few.

3 Q: However, Mr. Shepherd has questioned you about, he's
4 clearly questioned you to a large extent on the
5 Static 99, the Stable 2007 and Acute 2007 scores and
6 at the time that you conducted this evaluation, you
7 said within forty five days of that time, it was
8 likely, highly likely that Mr. Russell would commit
9 another offense. Is that correct?

10 A: Almost correct. What that predicts is once released
11 into the community, not forty five days from when I
12 evaluated him, but forty five days when he's
13 released to the community.

14 Q: Alright. Now, Dr. Burke, I just want to point to, do
15 you have a copy of this?

16 A: Yeah.

17 Q: This would be, I think, faxed page number five.
18 Where under the Conner's Continuous Performance
19 Test.

20 A: Right.

21 Q: And I just want to confirm that this statement is
22 true. It's at the bottom of the first paragraph and
23 it says the confidence index can be described in the
24 following way: the chances are 99.9, 99.9 out of 100
25 that a clinically significant problem does exist

1 associated with inattention an impulseitivity not
2 related to a diagnosis of ADHD.

3 A: That's correct.

4 Q: That is a correct statement?

5 A: That is a correct statement.

6 Q: And ADHD is, just for clarification?

7 A: Commonly called ADD, but it's Attention Deficit
8 Hyperactivity Disorder. So what that indicated was
9 he had some inattention and impulseitivity problems,
10 but it was not due to a diagnosis of ADHD. It was
11 suggested a possibility that he had a head injury or
12 history of a head injury or some other organic brain
13 damage. I stated later that I felt like he needed a
14 neurologist to examine him.

15 Q: Just again for further clarification, as part of
16 this report, there's a statement that you received
17 information from the patient and collateral
18 information provided by the patient and other
19 sources. It's on the first page, it's a warning
20 regarding limitations of this summary.

21 A: Right.

22 Q: Did you, Dr. Wadman has testified that she received
23 an incident reports, statements from the children,
24 the parents, everybody involved. Did you receive
25 that information as part of this assessment?

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1 A: Well, to be honest with you, I don't know. I do,
2 because it's not listed and the following report I
3 have all of the documents listed I've gone over and
4 I didn't do that here. It's, it wasn't, it wasn't
5 suppose to go anywhere. So.

6 Q: Alright and, and, am I correct in stating, when you
7 conduct these type of evaluations, you make no
8 assumption as to wether or not Mr. Russell has or
9 has not committed the acts with which he is charged?
10 Am I correct in that assumption?

11 A: No, we have to be really clear about something. When
12 I did this, he was not convicted. His attorney sent
13 it to me and said tell me what you think. Okay?
14 That's a totally different animal than doing an SVP
15 hearing. Okay? I mean those are two different
16 things. So, so, ask me the question again.

17 Q: I just want to make sure I and my question was this,
18 when you are asked to conduct these evaluations, you
19 make no assumption as to the guilt or innocense with
20 regard to the particular charges that Mr. Russell
21 ...

22 A: With this, with this document ...

23 Q: Right, with this document.

24 A: ... that I'm working on, right, I had to, I could
25 not take the position. As I, as it was stated,

1 reported to me from Mr. Russell he was saying that
2 he was innocent the day I evaluated him.

3 Q: So you've done no evaluation and I think you've
4 testified it would be unethical for you to give an
5 opinion in this matter today, but you've done no
6 evaluation after Mr. Russell's guilty pleas where he
7 admitted that he did that conduct?

8 A: That's correct.

9 Q: Your Honor I think that's all I have.

10 The Court: Re-direct?

11 RE-DIRECT EXAMINATION OF DR. BURKE BY MR. SHEPHERD:

12 Q: Dr. Burke, does a patient's inattention and
13 impulseitivity of Mr. Russell's per your finding, is
14 that something that could be treated medically and
15 clinically?

16 A: Well, another physician, another neurologist, but I
17 suggested that he be evaluated by one and they could
18 better answer that question.

19 Q: Would that be something that would assist in your
20 particular type of program for treatment, were he to
21 be released per the terms of his probation?

22 A: I'm just really having a hard time with some of your
23 questions. Can you ask that again?

24 Q: Sure, with regards to the terms of his probation ...

25 A: Right.

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1 Q: And one of those terms being he has to come to see
2 you for treatment, would it help you in treatment of
3 him if he had this type of diagnosis or, or got the
4 type of assistance he needed with regards with the
5 impulseitivity issues?

6 A: Okay, I would, if I were charged with the
7 responsibility of monitoring and treating him, I
8 think it would be absolutely necessary that he have
9 a proper ---_again I'm not a physician, but I have
10 two psychiatrists on staff who are who would address
11 those issues.

12 Q: And if Mr. Russell were out on probation going to
13 you for services and did not go and get the
14 neurology report or any type of exam would you have
15 any type of hesitation contacting the Solicitor's
16 office that he violated a provision of his probation
17 for your program?

18 A: Well, I wouldn't have any problem with that. I mean,
19 you know, if he didn't have any health insurance or
20 anything ... Listen, I don't have a problem at all
21 calling probation and saying look this guy's not
22 following, you know, not following protocol. I take
23 what I do very seriously and I don't --- I'm pretty
24 strict with the program too, so to answer your
25 question, no I don't have a problem calling

1 probation at all.

2 Q: Great, thank you Dr. Burke. Nothing else.

3 The Court: Anything else Mr. Flores?

4 Mr. Flores: No Your Honor.

5 The Court: Alright, thank you sir. You can step
6 down.

7 Dr. Burke: Your Honor?

8 The Court: Yes?

9 Dr. Burke Could you, if you could put in an order that I
10 could submit to the state for my time?

11 The Court: Okay, we'll deal with that later.

12 Dr. Burke: Okay, thanks.

13 The Court: Alright thank you. Okay, next witness?

14 Mr. Shepherd: Okay Your Honor I call Mr. Bobby Russell.

15 The Court: Alright. Any objection to Mr., Dr. Burke
16 being excused?

17 Mr. Flores: None whatsoever.

18 The Court: Alright, place your left hand on the Bible
19 please sir and raise your right hand. And you name
20 sir?

21 A: Bobby Russell, Jr.

22 The Court: Do you swear the testimony that you give
23 to this court will be the truth, the whole truth and
24 nothing but the truth, so help you God? Alright,
25 thank you sir, you may have a seat. And your name

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1 sir?

2 A: Bobby Russell, Jr. You want me to spell that?

3 The Court: Yes sir.

4 A: R-U-S-S-E-L-L.

5 The Court: Okay, pull that microphone down just a
6 hair. Alright, go ahead Mr. Shepherd.

7 DIRECT EXAMINATION OF MR. RUSSELL BY MR. SHEPHERD:

8 Q: Mr. Russell, if you had gone forward with a trial,
9 how many years could the State have put you away for
10 if they had gotten a guilty verdict?

11 Mr. Flores: Objection Your Honor. This calls for
12 speculation

13 The Court: Alright, if he knows. I'm sure ...

14 Q: Mr. Russell do you have a general idea of the time
15 frame that the State could have incarcerated you for
16 had they gotten a guilty plea?

17 A: Forty five years.

18 Q: I'm sorry, not a guilty plea, a guilty verdict?

19 A: Forty five years.

20 Q: Alright forty five years. What type of plea deal did
21 the State approach you with?

22 A: Three years, time served with probation.

23 Q: Was there a suspended sentence?

24 A: It was fifteen, suspended to three.

25 Q: Okay, what does fifteen years suspended mean?

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1 A: It means if I violate anything, if I violate any
2 terms of my probation I can go to prison for, I
3 guess for each charge, fifteen years, which is forty
4 five years.

5 Q: Okay, now Mr. Russell, for the terms of your
6 probation, can you be in the presence of minor
7 children?

8 A: No sir.

9 Q: The terms of your probation, can you use drugs and
10 alcohol?

11 A: No sir.

12 Q: On the terms of your probation, do you have to take
13 prescribed medication for any bi-polar or mental
14 disorder. The terms of your probation, do you have
15 to register as a sex offender?

16 A: Yes.

17 Q: Do you have to go around and tell your neighbors?

18 A: Yes sir.

19 Q: Alright, do you have to undertake substance abuse
20 counseling?

21 A: Yes.

22 Q: The terms of your probation, do you have to run
23 random drug and alcohol testing?

24 A: Yes sir.

25 Q: For the terms of your probation, do you have to

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- 1 successfully complete Dr. Burke's treatment program?
- 2 A: Yes sir.
- 3 Q: Okay. Mr. Russell, do you know what happens if you
- 4 do not do all of those things?
- 5 A: I go back to prison.
- 6 Q: Do you want to go back to prison?
- 7 A: No sir.
- 8 Q: Okay. Mr. Russell, did you have a polygraph?
- 9 A: Yes sir.
- 10 Mr. Flores: Objection Your Honor.
- 11 The Court: Yes sir?
- 12 Mr. Flores: Polygraphs are not ...
- 13 The Court: Come on up.
- 14 (Side Bar)
- 15 The Court: Alright, objection sustained.
- 16 Q: Mr. Russell, the terms of your probation, if you
- 17 have to go and see Dr. Burke and you've heard the
- 18 testimony from the experts that you might have some
- 19 kind of organic brain disorder, will you go get the
- 20 neurology reports and take the treatment necessary?
- 21 A: Yes sir.
- 22 Q: And again, what's the penalty if you don't do it?
- 23 A: I go to prison.
- 24 Q: No further questions.
- 25 The Court: Mr. Flores?

1 CROSS EXAMINATION OF MR. RUSSELL BY MR. FLORES:

2 Q: Good afternoon Mr. Russell.

3 A: Hey.

4 Q: If I may approach the witness Your Honor?

5 The Court: Yes sir.

6 Q: Mr. Russell I'm going to show you what's been marked
7 as Plaintiff's exhibit 1,2 and 3 and see if you
8 recognize these?

9 A: Yes sir.

10 Q: And what are these exhibits?

11 A: Those are my sentencing sheets, is what it looks
12 like. Yeah, the sentencing sheets.13 Q: And it describes all the sentencing and probation
14 and conditions that Mr. Russell just described and
15 you agree with. Is that correct?

16 A: Yes sir.

17 Q: May I have those back? Right here, is this your
18 signature on Plaintiff's exhibit 1?

19 A: Yes sir.

20 Q: And on Plaintiff's exhibit 2?

21 A: Yes sir.

22 Q: And on Plaintiff's exhibit 3?

23 A: Yes sir.

24 Q: Isn't it correct that on November 8, 2010, you were
25 in this very courtroom, entering this guilty plea.

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1. Is that correct?

2. A: Yes sir.

3. Q: And you placed your hand upon the Bible and swore to
4. tell the truth, the whole truth and nothing but the
5. truth. Is that correct?

6. A: Yes sir.

7. Q: To these three charges, that's correct?

8. A: Yes sir.

9. Q: That you indeed did commit these three offenses
10. isn't that correct?

11. A: Yes sir.

12. Q: Beg the Court's indulgence. I have nothing further
13. Your Honor.

14. The Court: Alright, re-direct. Ladies and gentlemen,
15. let me do this; if you would please step in your
16. jury room and please do not discuss the case. I'll
17. have you back out momentarily. Is your last name
18. angel or angle?

19. A: Angle sir.

20. The Court: I'm going to appoint you as foreperson of
21. the jury. The foreman will tell you, excuse me, the
22. bailiff will tell you where to sit when you come
23. back out. Okay?

24. (Jury Break 4:34)

25. The Court: Alright, just so the record will be

1 complete, Mr. Shepherd you can continue with the
2 questions that we discussed up here.

3 Mr. Shepherd: I was simply going to ask if he had taken a
4 polygraph test under Dr. Burke's recommendation.

5 A: Yes sir.

6 Mr. Shepherd: And I was going to ask if he had passed
7 that?

8 The Court: Go ahead and answer.

9 A: Yes sir.

10 The Court: Alright and Mr. Flores you objected to
11 that under what basis?

12 Mr. Flores: The polygraph tests are inadmissible evidence
13 as to the truth or falsity of a particular ...

14 The Court: Well, polygraph tests are undoubtedly
15 scientifically unreliable. That's not my conclusion,
16 that's what science concludes in all reports across
17 the country say that passing or failing a polygraph
18 is not admitted under any circumstances. There was
19 some mention earlier of this witness having had
20 taken a polygraph when Mr. Shepherd was questioning
21 Dr. Wadman. I believe that was in the context of
22 did you know he passed a polygraph. How about the
23 objection then?

24 Mr. Flores: I don't believe that was the way I remember
25 that happening.

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1 The Court: What was your question?

2 Mr. Flores: I believe it was did he take one or did you
3 review the results of any polygraph?

4 The Court: So, there was no result? Okay, alright.
5 What's your position on this? On the admissibility
6 of the polygraph?

7 Mr. Shepherd: The admissibility, you know, we're talking
8 about a PPG which measures essentially the same
9 thing as a polygraph. It's measuring breaths, it's
10 measuring blood flow, it's measuring response to a
11 stimulus. He took this with regards, at the
12 recommendation of Dr. Burke who had done the
13 assessments and you know, we're looking at an expert
14 opinion saying I'm only looking to the guilty pleas,
15 but there's more to this story and if the man
16 pursuant to Dr. Burke's recommendation did take a
17 polygraph examination and did pass it, of course I
18 don't have an expert here to present the polygraph,
19 but Mr. Russell has informed me.

20 The Court: Okay, you think it's admissible in the
21 same respect that the PPG is?

22 Mr. Shepherd: I think so. Of course I've never raised an
23 objection to the PPG.

24 The Court: The PPG is recognized by science to be a
25 reliable test. I don't know how the thing works; the

1 only thing I can tell you is that I know from the
2 whatever scrutiny you look at it whether it's our
3 state law review or whatever else, the PPG is
4 scientifically reliable. The only, there's a case
5 that the only case that I know of directly dealing
6 recently with PPG is that it cannot be used in court
7 to determine whether or not he's actually guilty of
8 what he did, but it is admissible in the SVP
9 setting. Now as far as the polygraph, I would have
10 thought that over the years, medical science or
11 other science would have gotten to the point where
12 the polygraph could be refined and to some point be
13 declared reliable. However, I'm bound by what the
14 law is now and that is that it's not. So, I'm going
15 to sustain your objection to the witness or any
16 other witness saying what the result of it was. So,
17 I just wanted to make sure that was clear for the
18 record and make sure you are fully protected on the
19 record. Have you concluded your questioning of the
20 witness?

21 Mr. Shepherd: Yes, I do have just one short question.

22 The Court: Alright, we'll have the jury come back in
23 and continue with that.

24 (Jury enters courtroom 4:39)

25 The Court: Alright, Mr. Shepherd?

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1 Mr. Shepherd: Thank You.

2 RE-DIRECT EXAMINATION OF MR. RUSSELL BY MR. SHEPHERD:

3 Q: Alright Mr. Russell, you were just shown State's
4 exhibit 1,2 and 3. These would be the sentencing
5 sheets, correct? You pled guilty?

6 A: Yes sir.

7 Q: Did you plead guilty with terms of probation?

8 A: Yes sir.

9 Q: Okay and you're going to honor the terms of that
10 probation?

11 A: Yes.

12 Q: You don't want to go back to prison?

13 A: No sir.

14 Q: No further questions.

15 The Court: Mr. Flores?

16 Mr. Flores: Nothing further Your Honor.

17 The Court: Alright, you can step down. Alright,
18 we'll take a recess at this time.

19 Mr. Flores: No Your Honor.

20 Mr. Shepherd: No Your Honor.

21 The Court: Alright ladies and gentlemen we are going
22 to break for the day. If you will please be back in
23 the jury room tomorrow at 9:30. Will that be a
24 problem, time wise, for anybody? Alright, please be
25 back in your jury room at 9:30 tomorrow morning. You

1 you ready to proceed?

2 Mr. Flores: Yes, Your Honor.

3 The Court: Alright sir.

4 CLOSING ARGUMENTS OF MR. FLORES:

5 Mr. Flores: May it please the Court?

6 The Court: Yes sir.

7 Mr. Flores: Mr. Russell, Mr. Shepherd, ladies and
8 gentlemen of the jury, good morning. When I came
9 before you yesterday afternoon I said that this case
10 was about one question. It's whether or not Bobby
11 Russell is a sexually violent predator. To that
12 end, the State must prove to you, beyond a
13 reasonable doubt of 1. Mr. Russell has been
14 convicted of a sexually violent offense and 2. That
15 he suffers from a mental abnormality or personality
16 disorder that makes him more likely to commit acts
17 of sexual violence. I would submit to you that the
18 evidence presented, both by the State and by Mr.
19 Russell proves beyond a reasonable doubt that he is
20 indeed a sexually violent predator. First, to
21 prove that Mr. Russell has been convicted of such an
22 act or an offense, the State submitted into evidence
23 three separate exhibits which contain indictment, in
24 some case an arrest warrant and a sentencing sheet
25 that indicate that he did in fact plead guilty to

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1 these three charges of committing a lewd act on a
2 minor under that age of sixteen. In fact, when Mr.
3 Russell was on the stand, he confirmed that he did
4 come into this courtroom, before Judge Goodstein and
5 Judge Goodstein's signature is on each of these
6 sentencing sheets, he did place his hand on that
7 Bible, plead to tell the whole truth and nothing but
8 the truth, so help him God admitted to the acts
9 underlying these three offenses and signed these
10 sentencing sheets to indicate he in fact pled guilty
11 to these three charges. So the State would submit
12 and I don't believe Mr. Shepherd would disagree,
13 that Mr. Russell has indeed, been convicted of these
14 three offenses. The second question of course, is
15 whether or not Mr. Russell has a mental abnormality
16 or personality disorder that makes him more likely
17 to commit these acts. And you've heard the testimony
18 of two experts, Dr. Wadman who was asked by the
19 Court to perform an evaluation in this case. A
20 trained, medical psychiatrist and you've also heard
21 the testimony of Dr. Bill Burke or William Burke.
22 We who know him call him Bill and he testified that
23 he performed an evaluation prior to Mr. Russell's
24 guilty pleas. In the context of her testimony, Dr.
25 Wadman told you she was asked by the Court to

1 determine whether or not Mr. Russell does have a
2 mental abnormality or personality disorder and
3 whether or not, based on her expertise, and her
4 experience and the information she received from
5 this case, whether or not she believed and it was
6 her opinion that Mr. Russell has a lack of control
7 over his mental abnormality, if he had one, so that
8 he would commit future acts of sexual violence. Dr.
9 Wadman testified that based on all the information
10 she received and requested, police reports,
11 statements from witnesses, the sentencing sheets
12 with the allegations underlying Mr. Russell's
13 charges, the information she got from Dr. Burke, not
14 only through his draft report, but also through
15 telephone communications with him, as well as
16 anything she requested from the attorney's office,
17 that based on all of that information, as a trained
18 psychiatrist, who's done this type of evaluation
19 over a hundred times; she's testified both for the
20 State and against the State. That in this case, I
21 believe she said, to a reasonable degree of medial
22 certainty that Mr. Russell suffers from pedophilia.
23 A sexual attraction to children, non exclusive type,
24 because he also has sexual attraction to adults.
25 Which Dr. Wadman says is not uncommon. She said,

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based on all of that evidence that she received and to which she testified to to you, that based on that information, she believed Mr. Russell's conduct was such that he is likely to do this again. And let's talk about that a little bit, because that's really the crux of this case. As a lawyer, I can't tell what a diagnosis would be; I'm not trained in that. Dr. Wadman is trained, she's done this a lot, she's been through a lot of psychiatric training, she's been board certified in forensic psychiatry, so she knows what she's doing. She says, okay, Mr. Russell exhibits pedophilia, but does he lack that control? Has she and Dr. Burke stated, these cases, these predictions aren't one hundred percent, the evidence is not always going to show one hundred percent he's definitely going to do it again, but she stated, she stated the best predictor of future behavior is past behavior. I would submit to you that we would have to look at that past behavior. What happened? What was underlying these offenses? How did we get to here today? In 2008 Dr. Wadman testified that Mr. Russell entered the home of an individual he knew at 2:30 in the morning to apologize about some incident. As we have seen, as we have heard through the testimony, he was engaged at some point, in the

1 little girl's room, the four year old. And she
2 reported it to her mother and Mr. Russell was thrown
3 from the house. At some point he tried to come back
4 in the house through a window. And then Mr. Russell
5 was thrown out of the house again and threatened
6 with a gun. Alright, 2008, one charge, released on
7 bond. Paid to get out of jail denying these
8 accusations, was ordered to wear an ankle monitor.
9 We've heard that he, he then went to live with an
10 uncle, but the uncle's restrictions upon him,
11 restrictions upon him, the curfew at 9 o'clock. Get
12 here to the house, be here with me. He couldn't deal
13 with those restrictions, that control. Those
14 factors, which again, are like probation in essence.
15 You have to live with these rules. He said I can't
16 do that, so I'm going to go and live somewhere. He
17 takes up with somebody who's reported to be a known
18 drug dealer, minor children in the house. He's been
19 accused of sexually assaulting a four year old and
20 he lives in a house with minor children. From there,
21 we get two incidents in 2009; one on a two year old
22 girl, one on a five year old boy. These are
23 children. They are children who would subsequently,
24 be, be evaluated in essence, brought before a
25 trained person at the child center and asked to tell

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1 their stories. And they told their stories and they
2 said Mr. Russell did this to me. He had an ankle
3 monitor on, he knew he was out on bond, yet these
4 incidents happened. Now, something that, that we've
5 heard a little bit about today and yesterday, is
6 that did Dr. Wadman investigate the truth of these
7 allegations? I will submit to you that she has. I
8 will submit to you that she has. She had all the
9 incidents reports, she had all the police reports,
10 and the other thing she had were these sentencing
11 sheets, where Mr. Russell, again and I hate to keep
12 coming back to this, came in, put his hand on the
13 Bible and said I did these acts. Yet in her
14 interview of him, he says I didn't do any of these
15 acts. As an evaluator, was she asked to determine
16 whether or not Mr. Russell did or did not do these
17 acts? I will submit to you that that question was
18 answered by Mr. Russell when he pled guilty. That
19 is the point of our criminal justice system. When
20 an individual is accused of any charge, is upon the
21 State, the Solicitor's office in this case, here in
22 Dorchester county to prove beyond a reasonable doubt
23 that an individual has committed those sexual
24 offenses. That's exactly what happens in the
25 criminal context, before there's any plea

1 negotiations, any plea deals, the State bares the
2 burden of proving beyond a reasonable doubt Mr.
3 Russell indeed, did do these things. And you'll
4 often hear about plea deals, and Mr. Russell is, has
5 you know, indicated that he received a plea deal, he
6 received a fifteen year sentence, suspended to three
7 years, five years probation with a lot of
8 restrictions. And there are a lot of restrictions.
9 But I would submit to you that, that deal is not
10 relevant here today. When the Sexually Violent
11 Predator Act was passed and I told you this
12 yesterday, the legislature said we must find those
13 individuals who are most dangerous, who have
14 committed these acts and who we believe will commit
15 them again. Regardless of their sentence; they could
16 have gotten two years, they could have gotten time
17 served, they could have gotten thirty years. And I
18 would submit to you, we would still be here today
19 asking you to answer that question; had Mr. Russell
20 gone to trial and received any other sentence that
21 the sentence he received here. I've been through a
22 lot of schooling and I've taken a lot of tests and I
23 would submit to you this; my professors, my
24 teachers, told me on a test, a worksheet, on any
25 work I do, answer the question presented and that is

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1 what we're asking you to do today. We're asking you
 2 this question, is Bobby Russell a sexually violent
 3 predator? Not a tough question. I'm sorry, it is a
 4 tough question, it is a tough question. Pardon my
 5 speech it's a very tough question. We don't ask a
 6 judge to answer these questions, the State can't
 7 answer them themselves, we don't have that ability.
 8 We ask you, the jury to piece out that information.
 9 To find the truth of that matter. I would submit
 10 that we have shown Mr. Russell has been convicted of
 11 those sexually violent offenses. I would submit that
 12 the only evidence presented is that Mr. Russell does
 13 suffer from a mental abnormality that makes him more
 14 likely to commit acts of sexual violence. I thank
 15 you again for your time in this case. I know it will
 16 be a very difficult question to answer and I wish
 17 you the best of luck. Thank you.

18 The Court: Mr. Shepherd.

19 CLOSING ARGUMENTS OF MR. SHEPHERD:

20 Mr. Shepherd: Ladies and gentlemen, the State is
 21 absolutely right, this is a very difficult question
 22 to answer. It's very emotionally charged. You heard
 23 things that turn your stomach okay? And we
 24 understand that. We can only look to the evidence
 25 that was presented in making a decision. We have

1 sentencing sheets, yep, he pled guilty, okay? He
2 pled guilty. He pled guilty and he was sentenced
3 any part of his plea he has to admit that he's done
4 something. Well, we have an expert from the State
5 who gets up here and is offering an opinion based on
6 sentencing sheets, based on the Solicitor's file,
7 based on a few documents she received from Mr.
8 Russell's criminal attorney. She assumed, based on
9 the plea that's where we begin the analysis. That's
10 fair, that's what she's asked to do, but in
11 determining whether somebody has a mental
12 abnormality based upon the fact that they pled
13 guilty, these are the underlying offenses, we have
14 to admit, yes the qualifying offenses are there,
15 because he pled guilty. The convictions are there,
16 but a plea is just that. No evidence ever came
17 before the criminal court or a jury like yourselves
18 to decide. Mr. Russell was presented with a plea
19 from the State and now the State's arguing that
20 regardless of what the time served or what he pled
21 to, whether that's relevant or not, they're saying
22 it's not relevant. Well in this case it kind of is
23 relevant. In fact, it's very relevant. You've got to
24 look at the State saying, based on Dr. Wadman, who
25 met with this man for two hours, read a select

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1 amount of paperwork and issued an opinion based on
2 that, that this guy, because he pled is going to go
3 out there and do horrid, horrid things. The State
4 initially comes to Bobby Russell on the criminal
5 proceedings with the full opportunity to go after
6 this guy for forty five years or more as you heard
7 Mr. Russell state and they bring him three, credit
8 for time served, it's okay for you to walk out of
9 here in two or three months and stick to your
10 probation, the terms of this probation. He's got to
11 get treatment from Dr. Burke. You heard Dr. Burke
12 say he treats over two hundred and fifty sexually,
13 sexual offenders in his treatment program. They're
14 out there, they're in the neighborhood, he's
15 treating them, successfully and has been doing so
16 since 1981 I believe he said. He's been involved in
17 this type of work. One of the terms of his
18 probation is to see Dr. Burke. You heard Dr. Wadman
19 say that Bobby can't be trusted because he pled
20 guilty to two counts for something that occurred
21 while he was on bond, wearing an ankle bracelet.
22 You also heard her say that he was doing drugs. One
23 of the terms of Bobby Russell's probation is
24 mandatory drug counseling and mandatory random drug
25 and alcohol screening. You heard Bobby Russell say

1 that if he violates any provision he goes back to
2 prison to finish serving out a fifteen year
3 sentence. That wasn't hanging over his head when he
4 pled, was out on bond. In fact, Dr. Wadman didn't
5 think it relevant to look at any of the underlying
6 evidence. She didn't request and of course, she
7 wasn't the fact finder. She wasn't there to
8 determine guilt or innocence, because yes, he had
9 already pled. But she didn't go out when Mr. Russell
10 denied actually having done the offense that
11 determines whether he is a mentally abnormal person
12 and look for that mitigating evidence that he told
13 her about. She didn't look for any reports that said
14 he fingerprints weren't on the window. She didn't
15 look for any DNA evidence. Of course, she received
16 the report, but she didn't give it any weight. The
17 State allowed him to plea to three years and there's
18 got to be a reason. It's not in evidence, but you
19 got to think about it. It's reasonable doubt. If
20 he's such a sexually violent predator, why would the
21 State have been willing to allow that to begin with?
22 And then let's look at Dr. Wadman; time and time
23 again I'd ask her a question and time and time again
24 she'd shoot me down. She'd shoot me down pretty
25 good every single time. Because we were looking at

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1 Dr. Burke's assessment. Dr. Burke assessed this guy
2 with a battery of tests, objective measurements. She
3 had a copy of his draft report. It was a draft
4 report. She, she considered one part of it, but
5 everything else she kept saying no, I didn't
6 consider it, it was a drat report time and time
7 again you heard her say that was a mistake; Dr.
8 Burke told me that was a mistake. What was the first
9 thing Dr. Burke said when he got on the stand
10 yesterday? I made two mistakes; I made a mistake on
11 the date and I made a mistake with a word. And so
12 we went through that report with Dr. Burke, the
13 assessment that he did. We went through and bare
14 with me, the Static 99. You heard Dr. Wadman talk
15 about the Static 99 that she performed that placed
16 him at high risk. Okay? Dr. Burke did the same
17 Static 99 and stated that Bobby was a low to medium
18 risk over a period of fifteen years. We talked
19 about the dynamic factors of treatment and
20 supervision. Dr. Wadman said she didn't even
21 consider it, because one he wasn't on treatment and
22 supervision and you know, with the ankle bracelet
23 issue, she couldn't, she wouldn't go there. He
24 couldn't be trusted. You heard Dr. Burke say, well
25 yeah, something like that is typically considered in

1 an assessment, something he considers. On the
2 Stable 2007, Dr. Wadman says she doesn't do that
3 report, didn't look at it and even when confronted
4 with the low to medium or low nominal. Excuse me,
5 low to nominal risk, well Dr. Burke, I think that's
6 a mistake. Dr. Burke gets up there and says yeah,
7 the Stable 2007 is supposed to produce estimates of
8 sexual recidivism, violent recidivism and general
9 criminal recidivism. Dr. Burke said, his assessment
10 of Bobby Russell said it was low to nominal. He did
11 the Able screening with significant sexual interest
12 for Bobby Russell are adult and adolescent females.
13 You heard Dr. Wadman and Dr. Burke both say that's
14 normal. Okay? There's no doubt Dr. Wadman is very,
15 very good at what she does. There's no doubt she's
16 probably smarter than anybody sitting on this side
17 of that wall, but Dr. Wadman's report did not take
18 into account evidence that needed to be considered
19 in assessing whether or not somebody truly is
20 mentally abnormal. If a person denies having
21 committed a crime, even though yes, he admitted, he
22 admitted by virtue of his guilty plea. Does that
23 necessarily mean that he actually did it? Okay?
24 This is a very, very emotional issue. There are a
25 lot of assumptions that can be made. Evidence was

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1 presented that's pretty damning to Bobby. Litigating
2 evidence exists. I want you to harken in to what Dr.
3 Burke was talking about. The highest risk this guy
4 poses, if we assume this, if we assume the nasty
5 things in these are true okay? The highest risk he
6 poses is the initial forty five days after release.
7 Those initial forty five days after release under
8 supervision and probation, probation officers,
9 subject to alcohol and drug screening randomly,
10 zero tolerance from Judge Goodstein for alcohol and
11 drugs, mandatory and successful completion of Dr.
12 Burke's program. He's got to take medication for
13 any bi-polar disorder or anything like that. You
14 heard Dr. Burke say it'd probably be helpful if the
15 guy did go and get a neurology report, because it
16 would help him with his treatment program. That
17 Bobby would be mandatorily have to serve. And the
18 beauty of it all is that Dr. Burke stood there and
19 told you he wouldn't have a bit of hesitation to
20 pick up the phone and call probation if this guy
21 doesn't do what he says he'll do. Okay? So should
22 Bobby Russell be civilly committed for long term
23 care and treatment when the only high risk that the
24 objective assessment from the one guy who did the
25 bulk of the assessment true, physical, medical

1 testing said his highest risk is forty five days.
2 It's a scary thought to make these decisions. Don't
3 let your emotions and the assumptions the State
4 asked you to make over these plea deals cloud your
5 duty to look at this beyond a reasonable doubt. Dr.
6 Burke time and time again raised the issue of low to
7 nominal, low to medium over a long period of time.
8 The only high risk is that immediate time right
9 afterwards. The time period in which Bobby Russell
10 is going to be subject to stringent, stringent,
11 stringent terms of probation and we have a guy
12 sitting over here today, you got to look past the
13 shackles, you got to look past the prison garb and
14 here's why; his criminal sentence is over. It ended
15 in March and he's still sitting here. He's
16 involuntarily committed; this is how you're going to
17 see him until the doctors, yearly he can petition to
18 be released, but until doctors say it's okay for him
19 to be released, he can sit there forever. It is
20 potentially, you heard Dr. Wadman say, no it's not
21 forever. Potentially it could be. Particularly when
22 somebody doesn't go in there and say yeah I did it.
23 He admitted by virtue of his plea, but a man that
24 goes in there and maintains his innocence, well
25 that's not treatment. So those are issues that we

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1 think if somebody is going to say that somebody has
2 a mental abnormality, and you're going to say that
3 they need to be confined for treatment, but a man
4 maintains his innocence, even though he took a plea
5 because it was attractive, because he didn't have to
6 look at forty five years. It's something to
7 consider. Okay? Thank you for your time. I just
8 ask for fairness. Mr. Russell just asks for fairness
9 and partiality. Think through the evidence, try not
10 to let your emotions get the best of you and just
11 think objectively, look at the differences between
12 Wadman and Burke. There's reasonable doubt in there.
13 There's reasonable doubt between the position the
14 State took to begin with and the position the State
15 is now pursuing. It's two different statutes, but in
16 the end you got to look at it. Thank you folks,
17 good luck.

18 The Court: Alright, any reply from the State?

19 Mr. Flores: Very briefly Your Honor.

20 The Court: Alright.

21 REPLY ARGUMENT BY MR. FLORES:

22 Mr. Flores: I just want to come back and speak to you
23 very briefly about Dr. Burke's report, because
24 apparently that's where Mr. Russell would like to
25 place a lot of emphasis and I would too. Dr. Burke,

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1 as I stated in his qualifications yesterday, is well
2 qualified and recognized by the State. We agree he's
3 an expert in his field. We've hired him on multiple
4 cases. But I would submit to you this and he and I
5 discussed that during cross examination, his report,
6 his evaluation is very limited in scope. He made no
7 assumption as to the charges against Mr. Russell.
8 When asked by Mr. Russell's defense attorney to just
9 evaluate the guy. So Dr. Burke, nothing wrong with
10 his report, he was not asked to conduct an
11 evaluation at this time. In fact he said if I were
12 to offer an opinion today, well yesterday, as it
13 were, that would be unethical, I haven't seen him, I
14 haven't looked at the records Dr. Wadman's looked
15 at, I haven't done all that research that she had
16 done. So at this time I cannot offer you an opinion.
17 And at that time, when I did this previous
18 evaluation, I couldn't tell you whether or not Bobby
19 did it or not. That's not what I was asked to do.
20 So I would submit to you Dr. Burke's report and
21 assessment, while very practical, because of the
22 assessments he raised in stating that Mr. Russell's
23 risks overall very high for forty five days. I think
24 the factors perhaps changed, because Dr. Burke
25 hasn't run those assessments again. I think it would

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1 be in the realm of speculation to say that those
2 recommendations and those assessments in full would
3 be the same now and it would be doing hard to Dr.
4 Burke as a doctor to say well his assessments must
5 be the same now as they were then, because things
6 have changed. Things are not the exact same as they
7 were when Dr. Burke first saw him. The only other
8 point I wish to make with you in this brief rebuttal
9 is that one of the requirements for Mr. Russell's
10 probation is to successfully Dr. Burke's sexual
11 offender program, sexual offender treatment program
12 and there's not doubt it's a good program; like I
13 said, he's an expert in his field and he does a
14 great job. But in order to successfully complete
15 that program as Mr. Shepherd as said, you have to
16 admit to your guilt. You have to admit your guilt.
17 So, he either admits his guilt or he doesn't admit
18 to it. He's not going to successfully complete Dr.
19 Burke's program if he doesn't admit his guilt. He
20 has admitted to his guilt, he has. And to come back
21 now and says that I'm not guilty is to make a
22 mockery of our criminal justice system. Look
23 carefully at the evidence. I thank you again for
24 your time.

25 The Court: Alright, ladies and gentlemen I know we've

1 only been in here for about thirty five minutes. Is
2 there anybody who needs to take a break before I
3 give you the charge? The charge itself is going to
4 take about ten minutes, perhaps fifteen minutes or
5 so. Is there anybody who needs to take a break?
6 Alright, ladies and gentlemen as you know, the State
7 has brought this action under what is called the
8 Sexual Violent Predator Act and that is legislation
9 enacted by our state legislature. I'm going to talk
10 to you over the next few minutes about what the
11 State will have to have proven beyond a reasonable
12 doubt. By this time, you obviously realize that we
13 have certain duties to perform. The responsibilities
14 that you have as I've told you more than once are
15 the sole judges of the facts like I told you
16 yesterday. You're the only people in the world who
17 can make the decision that will lead to the
18 completion of this verdict formed by your foreperson
19 and his signature only. Obviously, the witnesses
20 who testified, testified for you. Rarely, if ever
21 did they ever turn around and even say a word to me.
22 That is because their testimony is a factual
23 standpoint and does not matter to me. I have nothing
24 to do with this case; it's whether or not in your
25 view the State has met its burden of proof in this

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1 case. And during the course of this charge I'll be
2 referring to certain legal principals, things that
3 you may or may not be somewhat familiar with. For
4 the purposes of today, you are obligated one hundred
5 percent to accept the law exactly as I give it to
6 you. You may come into any given case with a
7 preconceived notion of what you think the law is or
8 what you think it ought to be. For today, and for
9 that matter, any time you're on a jury, you have to
10 put those notions out of your mind. Because under
11 your oath you are to accept the law exactly as I
12 give it to you. Now, in this case the State seeks
13 civil commitment of the respondent, Mr. Russell, for
14 long term control, care and treatment in a secure
15 facility. This proceeding that we're involved in is
16 not a criminal proceeding seeking incarceration. It
17 is a civil proceeding, seeking civil commitment and
18 the State of South Carolina alleges or claims that
19 the respondent, Mr. Russell is a sexually violent
20 predator under the laws of this state. The
21 respondent denies that he is a sexually violent
22 predator and the burden of proof is therefore solely
23 only on the State to prove by evidence sufficient to
24 satisfy each of you beyond a reasonable doubt that
25 the respondent is a sexually violent predator. The

1 Defendant or the respondent used interchangeably,
2 has no burden of proving or disproving anything and
3 if the State is unable to meet its burden of proof
4 as to one or more of the elements of this claim, the
5 respondent is entitled to a finding that he is not a
6 sexually violent predator. Now, as I will explain to
7 you in just a few minutes, the burden of proof in
8 this case is beyond a reasonable doubt, so if I
9 mention during the course of this charge that the
10 State does have a burden, that burden of proof is
11 beyond a reasonable doubt. Now, if I have said or
12 done anything during the course of this trial that
13 makes you think that I favor one side over the
14 other, you can put that out of your mind. Because
15 obviously I respect your role as the fact finders
16 and I trust you have not been keeping score as to
17 what my rulings have been, because my rulings are
18 not based on what I believe as far as the facts are
19 concerned; my rulings are based on the law. Now, as
20 the fact finders in this case, you are responsible
21 for determining the believability of the witnesses
22 who have testified. The lawyers have used that term
23 'believability' but it is also referred to as
24 credibility. You are the sole judges of the
25 credibility of the witnesses here who testified. I

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1 mentioned at the beginning of the trial, you can
2 take anything that is within your perspective of
3 common sense in determining who to believe and what
4 to believe. When you watch someone talk everyday,
5 you are doing that. You are conscious or
6 subconsciously saying do I believe what he or she is
7 telling me? And you're using your common sense in
8 making that determination. Some of the things that
9 you can use in that regard are what was the manner
10 and appearance of the witness who testified? Is he
11 or she hesitant or straight forward in answering
12 questions? That's also called demeanor. How did the
13 witness come to know the facts that he or she
14 testified to? And what was the witness' ability to
15 know the facts that he or she testified to? You can
16 take into account also whether or not there was a
17 reason for a witness to give testimony that helps or
18 hurts one side over the other. In other words, was a
19 witness bias or prejudice for the particular outcome
20 and also ladies and gentlemen you can take into
21 account whether or not that witness' testimony has
22 been strengthened or weakened by other evidence
23 that's in the record? As you know, you can believe
24 every word of what someone say, you can disbelieve
25 every word or you can believe parts and object the

1 rest. And what you don't do, is you don't count of
2 the number of witnesses for a particular proposition
3 and say well more people said this so I must believe
4 that. You know from the exercise of your common
5 sense that that's not true, you can believe one
6 witness over twenty or twenty over one, that's
7 entirely up to you. Now ladies and gentlemen the
8 fact that testimony in a particular instance has not
9 been contradicted does not mean you have to believe
10 it. You give all of the evidence, all of the
11 testimony the weight you think it's entitled to. You
12 gauge the credibility of the witnesses in the manner
13 that I've just explained to you to determine the
14 truth of the facts offered through that witness.
15 Now throughout this process you have one objective
16 and one objective only and that is to seek the truth
17 from whatever source it might come. You also heard
18 ladies and gentlemen the testimony of witnesses who
19 have special knowledge, skill, experience or
20 training or education in a particular field; we call
21 those expert witnesses. Typically, in a trial
22 someone who testifies cannot state opinions, but
23 there is an exception I mentioned to you yesterday,
24 through our rules of evidence for someone who is
25 qualified as an expert. That type of witness can

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1 give opinions and that witness can give the reasons
2 for those opinions. Now if you consider the
3 qualifications and the credibility of the expert and
4 the reasons for those opinions and you give those
5 things the weight that you think they are entitled
6 to. And again, as I mentioned with regard to any
7 witness, including experts, you are not bound by the
8 opinion of the expert just because it comes from an
9 expert. Again, you give it the weight that you think
10 the testimony is entitled. And the value and effect
11 of expert testimony is to be solely determined by
12 you. And no opinion of an expert can be accepted in
13 and of itself as truthful or reliable, but it must
14 be weighed by you, the jury, and convince your
15 judgment of its truth. Now ladies and gentlemen, I
16 mentioned to you earlier that the State does have
17 the burden of proving its case beyond a reasonable
18 doubt. I'm going to talk to you in detail about
19 that right now. So, what is a reasonable doubt in
20 the law? In the law, a reasonable doubt is the kind
21 of doubt that would cause an honest and a sincere
22 and a contentious person who is in search of the
23 truth, hesitate to act. Now proof beyond a
24 reasonable doubt in this case is proof that leaves
25 you firmly convinced that the respondent is a

1 sexually violent predator. On this earth and in this
2 world, there are very few things that we know with
3 absolute certainty. The law does not require the
4 State to present proof that overcomes every possible
5 doubt. It does require the State to present the
6 proof that overcomes every reasonable doubt. Now in
7 civil cases, in most civil cases, the burden of
8 proof is by what we call the greater weight or
9 preponderance of the evidence. In a case like that
10 it's typically illustrated that the scales of
11 justice are perfectly equal. The party that has the
12 burden of proof must tip those scales ever so
13 slightly in his or her favor to meet a burden by the
14 greater weight of the evidence. Now, in this type of
15 case, the burden of proof is beyond reasonable
16 doubt. The State's burden is more powerful, the
17 State's proof must be more powerful than simply
18 tipping the scales ever so slightly. It must be
19 proof beyond a reasonable doubt. Now, ladies and
20 gentlemen, if based on your consideration of the
21 evidence in this case, if you are not firmly
22 convinced that the respondent has been, has been
23 demonstrated to be a sexually violent predator, your
24 verdict must be in favor of the respondent Mr.
25 Russell. If, based on your consideration of the

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1 evidence you are firmly convinced that the
2 respondent is a sexually violent predator, you must
3 return a verdict for the State that he is a sexually
4 violent predator. Now, ladies and gentlemen
5 reasonable doubt may arise from evidence which is in
6 the case or reasonable doubt may arise from the lack
7 of or absence of evidence in the case. If you,
8 again, if you are firmly convinced that he is a
9 sexually violent predator, your verdict must be for
10 the State. If you believe that there is a real
11 possibility that he is not a sexually violent
12 predator, you must give him the benefit of the doubt
13 and find for the respondent in that regard. Now,
14 ladies and gentlemen I'm going to talk to you now
15 about what the State must have proven to you beyond
16 a reasonable doubt. The elements in this case which
17 the State must prove beyond a reasonable doubt are
18 essentially two fold. Number one, the respondent
19 has been convicted of a sexually violent offense.
20 And I charge you ladies and gentlemen that
21 committing a lewd act on a minor, under the age of
22 sixteen is a sexually violent offense under the laws
23 of this state. The second thing the State must prove
24 beyond a reasonable doubt is that the respondent,
25 Mr. Russell, suffers from a mental abnormality or a

1 personality disorder that makes him likely to engage
2 in acts of sexual violence if he is not confined in
3 a secure facility for long term control, care and
4 treatment. Now, inherent, or part of these two
5 elements ladies and gentlemen, is that the State
6 must prove the requirement that the respondent
7 mental abnormality or personality disorder causes
8 him serious difficulty in controlling his behavior.
9 In other words, the State must prove beyond a
10 reasonable doubt that the individual, Mr. Russell
11 suffers from a mental illness from which he cannot
12 sufficiently control without the structure and care
13 provided by a mental health facility, rendering him
14 other wise likely to commit a sexually violent
15 offense. Now ladies and gentlemen I am going to
16 define for you some of the terms that I have just
17 used. The words mental abnormality means a mental
18 condition effecting a person's emotional or
19 volitional capacity that predisposes that person to
20 commit sexually violent offenses. Now this mental
21 abnormality or personality disorder must cause the
22 respondent serious difficulty in controlling his
23 behavior. The words likely to engage in acts of
24 sexual violence means that the person's propensity
25 to commit acts of sexual violence is of such a

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1 degree as to pose a menace to the health and safety
2 of others so that he is dangerous to others. And
3 again, I remind you that the burden of proof that's
4 on the State is to prove to your satisfaction beyond
5 a reasonable doubt that number one, the Defendant
6 has been convicted of a sexually violent offense as
7 I've instructed you, and also suffers from a mental
8 abnormality or personality disorder that makes him
9 likely to engage in acts of sexual violence if he is
10 not confined in a secure facility for long term
11 control, care and treatment. Now ladies and
12 gentlemen we bring it all together to this point, if
13 the State has met, in your eyes, its burden of proof
14 beyond a reasonable doubt and has convinced you
15 beyond a reasonable doubt as to both of these two
16 elements, the State is entitled to a finding that
17 the respondent is a sexually violent predator. If
18 the State has not met its burden of proof beyond a
19 reasonable doubt as to either one or both of those
20 elements, the respondent is entitled to a finding
21 that he is not a sexually violent predator. Now
22 ladies and gentlemen I'll mention to you at this
23 point that your verdict in this case must be
24 unanimous. That means all of you have to agree.
25 This is not a majority vote, it is not a 11 to 1, 7

1 to 5, it must be twelve, zero whatever your verdict
2 might be. I'm not so much concerned about what your
3 verdict is, but I do want to make sure that you
4 understand that yesterday you did swear an oath to
5 try this case according to the law and evidence, so
6 help you God. And your responsibilities are just
7 beginning. You are to go back into the jury room in
8 just a few minutes and give these issues in this
9 case, the attention that they deserve. This is the
10 only day these parties will have in court and so
11 they expect and they are both entitled to a fair and
12 impartial trial. The only way that you can give that
13 is for you to render a verdict that speaks the
14 truth. Now Mr. Foreman, the verdict form is very
15 brief. It says at the top has the State of South
16 Carolina proven beyond a reasonable doubt that Bobby
17 Russell is a sexually violent predator under the
18 South Carolina Sexually Violent Predator Act? There
19 are two answers to that question; yes and no. Yes or
20 no. Now on the verdict form, of course the order
21 that these are put in means nothing, but one choice
22 had to come before the other. You are to discuss
23 these issues completely and once you are sure that
24 the verdict is unanimous, you put a check or an X in
25 the appropriate space beside yes or not then you

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1 sign the verdict form and you date it, knock on the
2 door and let the Bailiff know that you have reached
3 a verdict. If, during the course of your
4 deliberations, you have a question there will be a
5 note pad available. You simply write the question
6 down, sign it and tap on the door and let the
7 Bailiff know that you have a question. Now the law
8 dictates, number one if I can respond to your
9 question and number two how I may respond and you
10 are certainly able to ask a question that you think
11 are appropriate, but the law guides me in if and how
12 I can respond. Now, if someone has to excuse himself
13 or herself during the course of deliberations to use
14 the restroom, please stop your deliberation until
15 the person comes back. Also, if someone has to
16 leave the jury room, first of all, you have to get
17 my permission to leave and if someone does leave the
18 jury room you have to stop deliberations until that
19 person comes back. What you are obligated to do in
20 this case ladies and gentlemen is to take your
21 common sense view of the evidence, put it together
22 with the law as I've charged you and render a
23 verdict that speaks the truth. In sum, the word
24 verdict comes from the Latin word which literally
25 means speak the truth and that's what your verdict

1 must do. The next thing that we'll do ladies and
2 gentlemen is for you to excuse yourselves and go to
3 your jury room. You may not begin discussing the
4 case yet. The rules that we operate under require me
5 to enquire from the parties number one, if I left
6 anything out of my charge or if I charged you
7 anything incorrectly. So for the next few minutes
8 we'll be covering that. Your signal to deliberate
9 will be when the Bailiff comes to your door with the
10 verdict form and the exhibits that have been
11 introduced into evidence and tells you that you can
12 begin your deliberations. And again, give the issues
13 the consideration they deserve and we're looking
14 forward to hearing your verdict. Please go to your
15 jury room; you may not begin discussing the case
16 quite yet. Ms. Tyler, if you could just stand right
17 out in the hall okay?

18 A: Okay.

19 (Jury break 10:23)

20 The Court: Alright are there any exceptions or
21 additions from the State?

22 Mr. Flores: Nothing from the State Your Honor.

23 The Court: And from the respondent?

24 Mr. Shepherd: No sir.

25 The Court: Alright as far as the, your exhibit for i.d.

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1 for Dr. Burke, I'm not going to allow that into
2 evidence. I think that on the one hand he testified
3 fully about his observations and conclusions and he
4 was crossed on that. I think that the report itself
5 would be commutative to the things he did testify
6 and be somewhat confusing to the jury as to the
7 things in the report that were not specifically gone
8 into in cross. So I respectfully sustain the
9 objection of that. Now as far as the alternate; I
10 can do one of two things. I can keep her here in a
11 separate room in case somebody on the jury falls by
12 the wayside or I can excuse her, come back at two
13 with the rest of the panel or I can, well those are
14 about my choices.

15 Mr. Shepherd: I think this jury will be fine. I think
16 there would be no reason to have her held at this point.

17 The Court: Alright, Mr. Shepherd?

18 Mr. Shepherd: I have no objection to that.

19 The Court: Okay, I'll have her come in and I'll tell
20 her the panel's coming back at 2:00. If y'all can
21 get with the Court Reporter to make sure these
22 exhibits are in order.

23 (Alternate Dismissed)/ (Deliberations Begin 10:27)

24 The Court: Thank you. Alright. Mr. Flores, I believe
25 you're by yourself; just hang tight in case the jury

1 has a question or a verdict. Mr. Shepherd, I know, I
2 know you have some folks here behind you and I just
3 ask you ladies and gentlemen to be kind of close at
4 hand. If the jury has a verdict or a question I'll
5 certainly wait a reasonable time for you to come
6 back, but not unusually long. I had a lawyer one
7 time in Sumter who decided to go to Shoney's, to the
8 buffet and he relayed word that he'd be back after a
9 while. Well, he left his food, it got cold and he
10 never got to eat. Alright, thank you.

11 Mr. Flores: Thank you Your Honor.

12 The Court: Alright I was told the jury has a verdict. Is
13 the State ready?

14 Mr. Flores: Oh, yes the State is ready.

15 The Court: Is the respondent ready?

16 Mr. Shepherd: Yes sir.

17 The Court: Bring in the jury.

18 (Jury enters courtroom 10:59)

19 The Court: How many do we have?

20 Bailiff: Twelve.

21 The Court: Alright, I'm told Mr. Foreman that you've
22 reached a verdict?

23 Foreman: Yes Your Honor we have.

24 The Court: And is the verdict unanimous?

25 Foreman: Yes Your Honor.

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1 The Court: Okay, hand the form and the evidence to
2 the Bailiff. Alright, I'll review the verdict form.
3 The one question has the State of South Carolina
4 proven beyond a reasonable doubt that Bobby Russell
5 is a sexually violent predator under the South
6 Carolina Sexually Violent Predator Act? We the jury
7 unanimously answer the question as follows: Yes,
8 Bobby Russell is a sexually violent predator. Now
9 Mr. Foreman and ladies and gentlemen of the jury,
10 this is, if this is your verdict and it's still your
11 verdict, please raise your right hand. Alright the
12 record would show that all twelve jurors have raised
13 their right hand. Alright, is there anything from
14 the State before the jury is released?

15 Mr. Flores: No Your Honor.

16 The Court: Anything from the respondent before the
17 jury is released?

18 Mr. Shepherd: No sir.

19 The Court: Alright ladies and gentlemen that
20 concludes your service for this particular case.
21 Please note that no one can quarrel with your
22 verdict. I would ask you to do one more thing
23 concerning this case, do not discuss this case,
24 including your service about the verdict. Also, if
25 someone wants to talk to you about the case you can

1 tell them you can't talk about it for the rest of
2 this week. After your service this week is over you
3 can talk about this case all that you want. You
4 don't have to, but if someone approaches you later
5 on and wants to talk to you about your verdict or
6 anything about this case and you don't want to talk
7 about it, just tell the person that. You don't have
8 to give any reason for it. If that person persists,
9 you get their name and let the Clerk of Court know
10 and she will relay that to me and then I'll take
11 care of that. Now the rest of the panel is coming
12 back today at two o'clock. We'll be picking a jury
13 at that time. You are released until two pm and I
14 look forward to seeing you at around that time.

15 Thank you very much.

16 (Jury excused 11:02)

17 The Court: Alright, any motions from the respondent?

18 Mr. Shepherd: Not at this time Your Honor.

19 The Court: Alright, I'll allow him ten days to make
20 any motions that you see fit.

21 Mr. Shepherd: Thank you.

22 The Court: I won't calculate the days for you, but
23 keep in mind that today is November the first.

24 Alright what is the, is the operative section Mr.

25 Flores 44-48, 100?

The care and treatment of Bobby Russell

163

1 Mr. Flores: That's correct Your Honor.

2 The Court: Alright what is the State's position on
3 the putting the jury's verdict in place as far as
4 the statute?

5 Mr. Flores: As a result of the verdict coming back that
6 Mr. Russell is a sexually violent predator, we do
7 have a proposed order of commitment denoting that in
8 writing. I have a copy of that for Mr. Shepherd.

9 The Court: Alright. Alright I'll note that 44-48-100
10 provides that if a court of jury finds that a person is a
11 sexually violent predator, the person must be committed
12 to the Department of Mental Health for control, care and
13 treatment until such time as the mental abnormality or
14 personality disorder has so changed that he's safe to be
15 at large and released pursuant to statute. Is that still
16 the operative code section Mr. Flores?

17 Mr. Flores: Yes Your Honor.

18 The Court: Alright Mr. Shepherd do you have any, I
19 know you disagree with the jury's verdict, but do
20 you have any procedural questions or objections to
21 the order of commitment?

22 Mr. Shepherd: No, the order of commitment looks pretty
23 standard.

24 The Court: Alright, gentlemen, I appreciate the way that
25 you've tried your case. I will sign this order. Mr.

1 Russell I trust that you will note that this is
2 simply one step in the process. Your lawyer will
3 advise you about any and all rights that you have,
4 including, but not limited to the right to petition
5 for your release under the specific provisions of
6 the statute. Is that after a year? Is that correct
7 Mr. Flores or at such other time as they may think
8 that he is safe?

9 Mr. Flores: I believe the statute provides an annual,
10 yearly review. I believe that code section is 44-48-
11 110. However, at any time that the mental ...

12 The Court: The department?

13 Mr. Flores: The department does believe Mr. Russell's
14 condition has changed, he's completed the program, a
15 discharge board would meet to make recommendations.
16 The director of the Department of Mental Health
17 authorizes Mr. Russell to petition so that could
18 happen at any point, not limited to that yearly
19 hearing.

20 The Court: Alright. Okay, I'll issue the order as
21 presented by the State and thank you very much for
22 your participation.

23 Mr. Flores: Thank you Your Honor.
24
25

1/34 years sub. 4 year 2.5 years probation - no contact w/victim

5/15 years

STATE OF SOUTH CAROLINA)
 COUNTY OF Dorchester)
 STATE VS.)
Bobby Russell Jr)
 AKA:)
 Race: Sex: M Age: 35)
 DOB: SS#:)
 Address:)
Summerville, SC 29483)
 DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS18-0990
 A/W#: M118482
 Date of Offense: 5/9/2009
 S.C. Code §: 16-15-140
 CDR Code #: 2468

PLAINTIFF'S EXHIBIT
 10/31/11
 MRS

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
 TO: Lewd Act, Committing or Attempting Lewd Act Upon Child Under 16 *BR*

CONVICTED OF or PLEADS

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. *BR* (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: D.A. Ryan 7667 Bobby Russell Jr 76970
 Bell, Harrison SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment 5
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Det. Waives Hearing Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 set by SCDPPPS

11-8-2010
 2011 JUN 13 PM 12:03
 CERTIFIED COPY
 DORCHESTER COUNTY
 CLERK OF COURT
 § 24-13-40 to be calculated and applied

500 days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: Zero tolerance for alcohol & illegal drug
* Must take prescribed medicine for depression
* Must report to S&K office
 Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

Recipient: _____

*Fine:

| | |
|--|-----------------|
| § 14-1-206 (Assessments 107.5 %) | \$ |
| § 14-1-211(A)(1) (Conv. Surcharge) | \$100 \$ 100.00 |
| § 14-1-211(A)(2) (DUI Surcharge) | \$100 \$ |
| § 56-5-2995 (DUI Assessment) | \$12 \$ |
| § 56-1-286 (DUI Breath Test) | \$25 \$ |
| § 47.12 (Public Def/Prob) | \$500 \$ |
| § 14-1-212 (Law Enforc. Funding) | \$25 \$ 25.00 |
| § 14-1-213 (Drug Court Surcharge) | \$100 \$ |
| § 50-21-114(BUI Breath Test Fee) | \$50 \$ |
| § 56-5-2942(J) (Vehicle Assessment) | \$40/ca \$ 5.00 |
| § 90.7 (SCCJA Surcharge) | \$5 \$ 3.90 |
| 3% to County (if paid in installments) | \$ 133.90 |
| TOTAL | \$ 133.90 |

Clerk of Court/ Deputy Clerk

Cheryl Hanam

Court Reporter:
 SCCA/217 (06/2009)

Bonnie LNU

PRESIDING JUDGE

Judge Code: _____

Sentence Date: 11-8-2010

* May not be in the presence of minor children
 * Must successfully complete treatment (KINSER et al.)

126

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

INDICTMENT
2009GS18-0990

At a Court of General Sessions, convened on August 3, 2009 the Grand Jurors of
Dorchester County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH MINOR FIRST DEGREE

That in Dorchester County, South Carolina, on or about May 9, 2009, the
Defendant, Bobby Russell Jr, did willfully and unlawfully assault the
victim, Minor 2 , with the intent to commit a sexual
battery described as digitally penetrated the female victim age 2, and the said
victim was less than 11 years old. This offense being in violation of Section 16-3-
655, of the South Carolina Code of Laws, as amended.

CERTIFIED COPY
2011 JUN 13 PM 12:03
Christy R. King
CLERK OF COURT
DORCHESTER COUNTY

Against the peace and dignity of the State, and contrary to the statute in
such case made and provided.

B. Harrison Bell
Harrison Bell, Solicitor

ARREST WARRANT

M-118482

STATE OF SOUTH CAROLINA

County/ Municipality of

Dorchester

THE STATE
against

Bobby Russell, Jr

Address:

Summerville, SC 29483-

Phone: _____ SSN: 2
Sex: M Race: _____ Height: 5 10 Weight: 160
DL State: SC DL: _____

Agency ORI #: SC0180000

Prosecuting Agency: Dorchester County Sheriff

Prosecuting Officer: T Morgan - 7963

Offense: Sex / Criminal sexual conduct with minor or attempt - victim under 11 yrs of age - First degree

Offense Code: 0385

Code/Ordinance Sec: 16-03-0655(A)(1)

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Bobby Russell, Jr. on May 30th, 2009

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
101 Ridge Street
St. George, SC 29477

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Dorchester

Personally appeared before me the affiant T Morgan

being duly sworn deposes and says that defendant Bobby Russell, Jr

did within this county and state on or about 05/09/2009 - 5/20/09

State of South Carolina (or ordinance of County/ Municipality of Dorchester)

In the following particulars:

DESCRIPTION OF OFFENSE Sex / Criminal sexual conduct with minor or attempt - victim under 11 yrs of age - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

Bobby Russell Jr. digitally penetrated the vagina of 2 year of age female at . The victim disclosed to her mother by physically demonstrating that "Bobby" had put his fingers into her vagina, after her mother found child pornography on 05/22/09 on a computer that Russell had been using. While at MUSC on 05/23/09, the victim indicated that he did it when it was dark outside and in her bedroom. The victim's mother provided a statement indicating that the victim's behavior had changed drastically a few days after Russell started staying at their home around 05/09/09. She began to wet her bed after having been fully potty trained for a yr, and refused to go to the bathroom when he was present. She refused to take baths or showers, which she had previously enjoyed. She also started holding her vaginal area stating that "it hurts". The victim's mother also found a baby photo album of the victim out in the bedroom that the defendant was staying in. Russell has a history of CSC with a Minor 1st degree.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Dorchester

Affiant's Address 100 Sears Street
Saint George, SC 29477-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 5/9/2009 defendant Bobby Russell, Jr

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of Dorchester

) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor or attempt - victim under 11 yrs of age - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

OR 05/23/2009

Signature of Issuing Judge (L.S.)
Jayice Y. Simmons

Judge Code: 7094

Judge's Address Troy Knight Judicial Complex
Summerville, SC 29483-4707

Judge's Telephone (843)832-0370

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

AFFIDAVIT

FILED - RECORDED

2009 JUN 5 AM 9:46

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

CERTIFIED COPY
2011 JUN 13 PM 12:02
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

128

General Sessions Tracking Sheet
Indictment # 0000GS18

Name: Russell, Bobby Jr

Warrant/Ticket # M118482

AKA:

Date of Arrest: 05/30/2009

Addr:

29483

Date of Offense: 05/09/2009

Date Rcv by Clerk 06/08/2009

Magistrate: Clerk Of Court C P, G S, And Family Court

SSN#

Counts: Code: 0385/Sex / Criminal sexual conduct with minor or attempt - victim under 11 yrs of age - First degree

Sex: M Race:

DOB:

DL#

Indictment # 0000GS1809-990

Disposition Information

- 1. Transmitted to SOL & SCCA:
- 2. Disp Received by Clerk:
- 3. Date of Disposition:

11-8-10

- | | | | |
|-------------|-------------------------------------|-----------------------------|----------------|
| Disposition | <input checked="" type="checkbox"/> | 1. Guilty plea | Explain: _____ |
| | <input type="checkbox"/> | 2. Trial - guilty | Explain: _____ |
| | <input type="checkbox"/> | 3. Trial - not guilty | Explain: _____ |
| | <input type="checkbox"/> | 4. Dism/Not Pros/Pros Ended | Explain: _____ |
| | <input type="checkbox"/> | 5. Judicial Commitment | Explain: _____ |
| | <input type="checkbox"/> | 6. Judicial Dismissal | Explain: _____ |
| | <input type="checkbox"/> | 7. Remanded | Explain: _____ |
| | <input type="checkbox"/> | 8. Dismissed at Prelim | Explain: _____ |
| | <input type="checkbox"/> | 8. No Bill | Explain: _____ |
| | <input type="checkbox"/> | 9. Failure to Appear | Explain: _____ |
| | <input type="checkbox"/> | 10. Other | Explain: _____ |

CERTIFIED COPY
 2011 JUN 13 PM 12:03
 CLERK OF COURT
 BRONX COUNTY

Judge: Doodstein
 Defense Atty: Paul Urrichio / Chad Fuller
 Counts: Code: 2468

Court Reporter: Bonnie Kelly
 Solicitor: H. Bell

Sentence: 15 years susp upon service of 3 years + 5 years probation.

500 hrs community service
 must register sex offender

concurrent
 OTS

no contact w victims directly or indirectly
 no presence minor children
 central registry could abuse

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Dorchester
 STATE VS.
Bobby Russell Jr
 AKA: _____
 Race: _____ Sex: M Age: 35
 DOB: 10/27/76 SSN: _____
 Address: Summerville, SC 29483
 DL#: _____ SID# CLERK OF COURT

INDICTMENT/CASE#: 2009GS18-1097
 A/W#: M118615
 Date of Offense: 5/9/2009
 S.C. Code §: 16-15-140
 CDR Code #: 2468

PLAINTIFF'S EXHIBIT
 10/31/11
 2
 MRS

In disposition of the said indictment against now the Defendant who was
 TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996) CONVICTED OF or PLEADS

In violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45
 Whichever 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (Defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 A/P: B. H. R.M. 7263 SC Bar# 76970
Bell, Harrison SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of 3 days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-45 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms:
 set by SCDPPPS

PTUP
500 days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab or Job Corp.
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 parts of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Recipient: _____
 *Fine: _____ \$
 § 14-1-206 (Assessments 107.5%) \$
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$
 § 56-5-2995 (DUI Assessment) \$12 \$
 § 56-1-286 (DUI Breath Test) \$25 \$
 § 47-12 (Public Def/Prob) \$500 \$
 § 14-1-212 (Law Enforc. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$100 \$
 § 50-21-114(BU) Breath Test Fee) \$50 \$
 § 56-5-2942(J) (Vehicle Assessment) \$40/ve \$
 § 90.7 (SCCJA Surcharge) \$3 \$ 5.00
 3% to County (if paid in installments) \$ 3.00
 TOTAL \$ 192.00

Appointed PD or appointed other counsel, §47.12
 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Orville Graham
 Court Reporter: Bruce Kelly
 SCCA/217 (06/2009)

PRESIDING JUDGE [Signature]
 Judge Code: 21-1-108
 Sentence Date: 11-8-2010

rights, I hereby waive presentment to the Grand Jury.

11/09/2012 10:01 B438320178

Defendant

hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2009 JUL 31 AM 09:10

FILED - RECORDED

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

DORCHESTER COUNTY
CLERK OF COURT
CHERYL GRAHAM

2011 OCT 26 PM 11:38
CERTIFIED COPY

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS
August 3, 2009 TERM

THE STATE
vs.

Bobby Russell Jr

Indictment for

LEWD ACT, COMMITTING OR
ATTEMPTING LEWD ACT UPON CHILD
UNDER 16

SC Code: 16-15-140

T Morgan

Dorchester County Sheriff

ARREST WARRANT NUMBER
M118815

Arrested: June 8, 2009

ACTION OF GRAND JURY

TRUE BILL

DATE 7/30/09

Foreperson of Grand Jury
Date: July 30, 2009

VERDICT

Foreperson of Petit Jury
Date:

CERTIFIED COPY

2011 OCT 26 PM 1:38

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF DORCHESTER

2009GS18-1097

Cheryl Anderson
CLERK OF COURT
DORCHESTER COUNTY

At a Court of General Sessions, convened on August 3, 2009 the Grand Jurors of
Dorchester County present upon their oath:

**LEWD ACT, COMMITTING OR ATTEMPTING LEWD ACT UPON CHILD
UNDER 16**

That in Dorchester County, South Carolina, on or between May 9, 2009 and May
20, 2009, the Defendant, Bobby Russell Jr, being over the age of 14 years old,
did willfully and lewdly commit or attempt to commit a lewd or lascivious act upon
the body or its parts of ^{Minor 1} a child under the age of sixteen (16) years
with the intent of arousing, appealing to, or gratifying the lust or passions or
sexual desires of himself or the child. This offense being in violation of Section
16-15-140, of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in
such case made and provided.

B. Harrison Bell

Harrison Bell, Solicitor

M-118615

STATE OF SOUTH CAROLINA

County/ Municipality of

Dorchester

5:11:22 AM

THE STATE
against

Bobby Russell, Jr

Address

Summerville, SC 29483-

Phone _____ SSN _____

Sex M Race _____ Height 5 10 Weight 160

DL State SC DL # _____

DOB _____ Agency ORI # SC0180000

Prosecuting Agency Dorchester County Sheriff

Prosecuting Officer T Morgan - 7963

Offense Sex / Lewd Act. committing or attempting lewd act upon child under 16 (June 4, 1996)

Offense Code 2-468

Code/Ordinance Sec 16-15-0140

This warrant is CERTIFIED FOR SERVICE to the

County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law

(L.S.)

Date _____ Signature of Judge

RETURN

A copy of this arrest warrant was delivered to defendant Bobby Russell Jr. on 06/01/2009

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
101 Ridge Street
St. George, SC 29477

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Dorchester

Personally appeared before me the affiant T Morgan

being duly sworn deposes and says that defendant Bobby Russell, Jr

did violate the criminal laws of the State of South Carolina (or ordinance of Dorchester)

in the following particulars

DESCRIPTION OF OFFENSE Sex / Lewd Act. committing or attempting lewd act upon child under 16 (June 4, 1996)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

Between the dates of 05/09/09 and 05/20/09 Bobby Russell Jr. committed a lewd act on a 5 year old male at 1 Summerville. In that he pulled the victims pants down and started to fondle the victim's penis with his hand. The victim's 2 year old sister had been sexually assaulted by the suspect, so the victim was scheduled for an interview at the Dorchester Children's Center. During the forensic interview he disclosed that the suspect had pulled down his pants and "played" with his penis using his hand. The defendant has a history of Criminal Sexual Conduct with a Minor 1st degree in November, 2008.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Dorchester

Affiant's Address 100 Sears Street
Saint George, SC 29477.

Affiant's Telephone _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 5-9-2009 defendant Bobby Russell, Jr

did violate the criminal laws of the State of South Carolina (or ordinance of Dorchester) as set forth below.

DESCRIPTION OF OFFENSE: Sex / Lewd Act. committing or attempting lewd act upon child under 16 (June 4, 1996)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me

on 06/01/2009

Signature of Judge

Frederick J. Newton

Judge Code 7173

Judge's Address Troy Knight Judicial Complex
Summerville, SC 29483-4707

Judge's Telephone (843)832-0370

Issuing Court Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

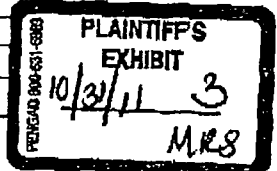
10 sup. 2009 2009 prob. Nicholas J. Williams

S. 11/09

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Dorchester)
 STATE VS.)
Bobby Russell Jr)
 AKA:)
 Race: Sex: M Age: 35)
 DOB: SS#:)
 Address:)
29483)
 DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS18-1275
 A/W#: 2009DOR10
 Date of Offense: 11/2/2008
 S.C. Code §: 16-15-140
 CDR Code #: 2468



SENTENCE SHEET

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Lewd Act, Committing or Attempting Lewd Act Upon Child Under 16

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Bell, Harrison SC Bar# 7067 x Bobby Russell Jr Defendant 76970 Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed 3 years
 and/or to pay a fine of \$ 0; provided that upon the service of 3 days/months/years and/or payment
 of \$ 0; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waiver Hearing Ordered
 Total: \$ 0 plus 20% fee: \$ 0
 Payment Terms:
 set by SCDPPPS

PTUP 300 days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 0 beginning
 \$ 0 paid to Public Defender Fund
 Other:

2011 JUN 13 PM 12:00
 CERTIFIED COPY
 CLERK OF COURT
 DOUGLAS ESTER QUINRY

| | |
|--|-----------------|
| Recipient: | |
| *Fine: | \$ |
| § 14-1-206 (Assessments 107.5 %) | \$ |
| § 14-1-211(A)(1) (Conv. Surcharge) | \$100 \$ 100.00 |
| § 14-1-211(A)(2) (DUI Surcharge) | \$100 \$ |
| § 56-5-2995 (DUI Assessment) | \$12 \$ |
| § 56-1-286 (DUI Breath Test) | \$25 \$ |
| § 47.12 (Public Def/Prob) | \$500 \$ |
| § 14-1-212 (Law Enforce. Funding) | \$25 \$ 25.00 |
| § 14-1-213 (Drug Court Surcharge) | \$100 \$ |
| § 50-21-114(BUI Breath Test Fee) | \$50 \$ |
| § 56-5-2942(J) (Vehicle Assessment) | \$40/ea \$ |
| § 90.7 (SCCJA Surcharge) | \$5 \$ 5.00 |
| 3% to County (if paid in installments) | \$ 2.90 |
| TOTAL | \$ 133.90 |

872 2009 GS-18-970
 Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Cheryl Maham
 Court Reporter: Bonnie Kelly
 SCCA/217 (06/2009)

PRESIDING JUDGE Diane S. G.
 Judge Code: 21-1-112
 Sentence Date: 11-8-2010

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2009GS18-1275

At a Court of General Sessions, convened on August 3, 2009 the Grand Jurors of
Dorchester County present upon their oath:

**LEWD ACT, COMMITTING OR ATTEMPTING LEWD ACT UPON CHILD
UNDER 16**

That in Dorchester County, on or about November 2, 2008, the Defendant,
Bobby Russell Jr, being over the age of 14 years old, did willfully and lewdly
commit or attempt to commit a lewd or lascivious act upon the body or its parts of
, a child under the age of sixteen (16) years with the intent of
arousing, appealing to, or gratifying the lust or passions or sexual desires of
himself or the child. This offense being in violation of Section 16-15-140 of the
South Carolina Code of Laws, as amended.

CERTIFIED COPY
2011 JUN 13 PM 12:03
Cheryl K. ...
CLERK OF COURT
DORCHESTER COUNTY

Against the peace and dignity of the State, and contrary to the statute in
such case made and provided.

H. A. - RBM
Harrison Bell, Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS)
CASE NO. 2011-CP-18-394)

IN THE MATTER OF THE CARE)
AND TREATMENT OF)
BOBBY RUSSELL,)
RESPONDENT.)

ORDER FOR EVALUATION)
PURSUANT TO THE SEXUALLY)
VIOLENT PREDATOR ACT)

2011 MAR -7 PM 2:12
CLERK OF COURT

This matter comes before me on petition of the State of South Carolina for an order requiring the Respondent, Bobby Russell, to submit to an examination and to be detained in an appropriate secure facility pending a trial, pursuant the Sexually Violent Predator Act (S.C. Code Ann. Sections 44-48-10 *et seq.*). A Probable Cause hearing was held on March 3, 2011 in St. George; the State was represented by Assistant Attorney General Lloyd V. Flores, Jr., and the Respondent was personally present and represented by Andrew T. Shepherd, Esquire.

I have considered the showing made in respect to this matter and am of the opinion that probable cause exists to find that the Respondent is a Sexually Violent Predator as defined by S.C. Code Ann. Section 44-48-30.

THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED:

That the Respondent shall be:

- (a) Upon completion of his criminal sentence at the South Carolina Department of Corrections, transferred to and confined in the Dorchester County Detention Center until a final disposition of this action; and
- (b) Transported to an appropriate facility of the South Carolina Department of Mental Health for an evaluation to determine whether the Respondent suffers from a mental abnormality or personality disorder that makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

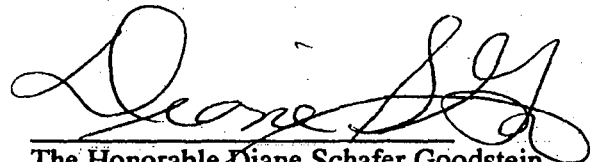
The court-ordered examination shall be requested by the Office of the Attorney General of South Carolina and scheduled by the examining facility as soon as possible. The Respondent is to arrive at the examining facility at the time established by confirmed appointment with the

staff of the examining facility. The Respondent continues under jurisdiction of this Court.

The qualified expert appointed by the Court at this Probable Cause hearing to examine the Respondent is Peggy C. Wadman, M.D., MPH.

Within five days of the receipt of the written report of the examination by the Office of the Attorney General of South Carolina, said office shall make a copy of such examination available to the Respondent's attorney.

AND IT IS SO ORDERED.



The Honorable Diane Schafer Goodstein,
Presiding Judge for the First Judicial Circuit
Court of Common Pleas

March 7, 2011
St. George, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)
 IN THE MATTER OF THE CARE)
 AND TREATMENT OF)
 BOBBY RUSSELL,)
 RESPONDENT.)

IN THE COURT OF COMMON PLEAS
 FIRST JUDICIAL CIRCUIT

CASE NO. 2011-CP-18-394

ORDER OF COMMITMENT

2011 NOV - 1 AM 11:01
 CLERK OF COUNTY

The trial of this case was held in the County of Dorchester in the Court of Common Pleas the week of October 31, 2011. A jury of citizens from Dorchester County heard this case pursuant to a request for a jury trial filed by the State. Assistant Attorney General Lloyd V. Flores, Jr., represented the State. Andrew T. Shepherd, Esquire, represented the Respondent. The jury having heard the presentation of the evidence made the following findings of fact pursuant to South Carolina Code Sections 44-48-90 and 44-48-100:


The State has proven beyond a reasonable doubt that Respondent, Bobby Russell, is a sexually violent predator as that term is defined in South Carolina Code Section 44-48-30.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT

- (a) Respondent is committed to the Department of Mental Health for his long-term control, care and treatment;
- (b) Respondent is to be detained in the Dorchester County Detention Center and transported, as soon as possible, by the Sheriff of Dorchester County to a secure facility of the Department of Mental Health at 4460 Broad River Road, Columbia, SC 29210. The Sheriff is to transport Respondent on such scheduled date as the Sheriff's Office coordinates with the Department of Mental Health.

AND IT IS SO ORDERED.

Nov. 1, 2011
 St. George, South Carolina



 The Honorable George C. James, Jr.,
 Presiding Judge for the First Judicial
 Circuit Court of Common Pleas

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)
 IN THE MATTER OF THE CARE)
 AND TREATMENT OF)
 BOBBY RUSSELL,)
 RESPONDENT.)
 _____)

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-18-394

VERDICT FORM

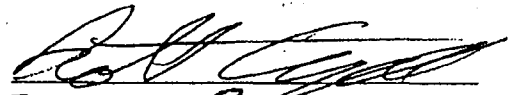
2011 NOV - 1 AM 11:01
 CLERK OF COURT
 JUDICIAL BRANCH

Has the State of South Carolina proven beyond a reasonable doubt that Bobby Russell is a sexually violent predator under the South Carolina Sexually Violent Predator Act?

We, the jury, unanimously answer the question as follows:

YES, Bobby Russell is a Sexually Violent Predator.

NO, Bobby Russell is not a Sexually Violent Predator.

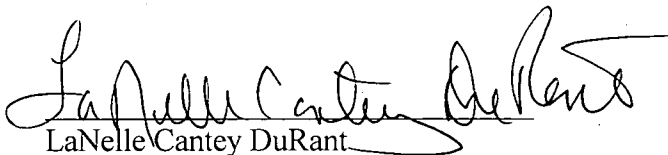

 Foreperson **Scott E. Angell**

Nov. 1, 2011
 St. George, South Carolina

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 21st, 2013


LaNelle Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT