

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM MARION COUNTY

D. Craig Brown, Circuit Court Judge

IN THE MATTER OF THE CARE AND TREATMENT
OF JIMMY MAC MCBRIDE,

APPELLANT

APPELLATE CASE NO. 2012-210127

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION	)	CASE NO. 2011-CP-33-00115

IN THE MATTER OF	)	
THE CARE AND TREATMENT OF	)	
JIMMY MAC MCBRIDE,	)	TRANSCRIPT OF RECORD
	)	
RESPONDENT.	)	
	)	
	)	

March 19-20, 2012
Marion, South Carolina

B E F O R E:

THE HONORABLE D. CRAIG BROWN, Judge; and a jury

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

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KRYSTAL J. SMITH
Official Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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1 morning and I told you to be back in the courtroom at eleven
2 o'clock over here in Marion or sometime thereabouts and that I
3 was going to be right behind you and I would qualify the jury.

4 Well, on my way to Marion I took a wrong turn in my dream
5 and didn't get over here until about 2:30 and all of you were
6 mad at me. You hadn't had lunch and I'd kept you sitting in
7 here all day long and I was glad to wake up and realize that
8 it was a dream at that point. I do know how to get to Marion
9 from Florence. I've been over here many times. Before I was
10 sworn in as a judge in this state, I worked over here a good
11 bit with the Public Defender's Office, so I spent a good bit
12 of time over here in Marion.

13 I grew up in a small town and I assume most of you have
14 heard of a big town, small town Hemingway. That's where I
15 grew up, but I've been in Florence since '98 and my wife is
16 from the big town of Bishopville, but I like to tell people we
17 moved to the city so to speak. But I've spent a lot of time
18 in Marion, a lot of time in small towns and love coming over
19 here to Marion to hold court.

20 Let me -- A few preliminary things that I -- While the
21 lawyers are looking at these lists to -- to go over with you.
22 You were probably told when you came in here this morning
23 about cell phones. I would hope that if you have a cell phone
24 on you, make sure that it's cut off or at least on vibrate
25 when you come in here.

1 MS. PEACE: Thank you, Your Honor.

2 THE COURT: All right, next matter.

3 MS. PEACE: The next matter would be I'd like to -- to
4 move to keep out any mention of offenses that Mr. McBride was
5 charged with but not convicted of and this would be on the
6 grounds that under the Constitution, a person is innocent
7 until proven guilty. So for that reason I think that mention
8 of these offenses would be more prejudicial than probative and
9 also potentially inflammatory.

10 THE COURT: All right, anything else on that issue, Ms.
11 Peace?

12 MS. PEACE: No, Your Honor.

13 THE COURT: All right, Mr. Bogle?

14 MR. BOGLE: Thank you, Your Honor. The Supreme Court has
15 addressed this case -- this issue on at least three occasions.
16 In the case of *Matter of the Care and Treatment of White* and
17 this is the Court of Appeals matter in 2000 -- in 2007. Cert
18 was denied in 2008. The issue there dealt with uncharged --
19 unconvicted -- excuse me, unconvicted offenses and what the
20 legislature -- what the Court did was it looked at the
21 language of the Sexually Violent Predator Act where it talks
22 about a person's records, including a person's criminal
23 offense record, may be considered by and it talked about the
24 multi-disciplinary team, the State's petition and so forth.

25 The Court then reviewed what was meant by the word

1 "criminal offenses" and it found that both convictions as well
2 as charges that did not result in convictions can be
3 considered by the doctor and by the Court and by the jury.
4 They've -- They noted that our Act is modeled after a --
5 Kansas' Act and that the Kansas courts have already dealt with
6 that issue.

7 Prior uncharged conduct, here we have -- Here's what we
8 have in this case. Here we have one sexually violent
9 conviction, CSC with a minor of the second degree. We also
10 have a lewd and lascivious act on a child out of the State of
11 Florida and I've got certified copies of both those, but
12 there's also three or four, I don't remember the exact number,
13 arrested but not indicted or not convicted sexual charges here
14 in South Carolina.

15 What's relevant about some of those is that some of those
16 happened while he was still under investigation for others or
17 still on bond for others or even house arrest for others. So
18 you got the proximity and the cumulative effect of all of them
19 and this is the kind of thing which Dr. Musick, the expert in
20 this case, will testify it's something he had to rely upon to
21 reach his opinion and something that's customarily relied upon
22 by experts in his field.

23 So we have the case of *White*. We also have the case of
24 *Matter of Care and Treatment of Ettel*. This was a Court of
25 Appeals case in 2008. Judge Manning heard it I believe in

1 Columbia. The issue there was prior criminal offenses which
2 did not result in criminal convictions, as well as a prior
3 murder conviction which wasn't sexual at all, and the Court
4 when looking at the issue of lack of control, which is
5 something we have to prove, the -- the Court of Appeals said
6 that the Court -- the jury could hear evidence about those
7 issues. So the *Ettel* case is the second one.

8 The third case is the *Matter of the Care and Treatment of*
9 *John Phillip Corley*. This was Supreme Court in 2003. Past
10 criminal history, including non-sexual crimes as well as
11 sexual crimes, were relevant to the jury's determination and
12 were allowed to be considered by the jury as part of the
13 doctor's testimony. I have copies of those three cases I'd
14 like to make a part of the record, Your Honor, just so you
15 could -- you could have them.

16 (Whereupon, counsel approaches the bench to hand up the
17 cases mentioned.)

18 MR. BOGLE: First is the *White* case, the *Ettel* case, if I
19 don't drop it, and finally the *Corley* case. So the State
20 would oppose this motion and ask that Dr. Musick be allowed to
21 testify about not only the convicted conduct, but also the
22 charged but unconvicted conduct, particularly the ones
23 involving a sexual nature.

24 And as part of his diagnosis of antisocial personality
25 disorder, he will talk about the respondent's vast criminal

1 record outside of just the sexual stuff. It is necessary to
2 look at all of this criminal record in order to diagnose him
3 with a condition that suggests a lack of control of his -- his
4 personality and his conduct. Thank you, Your Honor.

5 THE COURT: Anything else, Ms. Peace?

6 MS. PEACE: Yes, if I might briefly respond, Your Honor.
7 Three of the offenses that were of a sexual nature were no
8 billed. I mean it's not that he was not convicted. They --
9 They just were no billed by the grand jury. So -- so, you
10 know, formal charges were never even brought.

11 The other thing is that if we're committing him as
12 someone who cannot control his sexual predilections, then I
13 would say that the relevance of the non-sexual offenses --
14 They just simply are not relevant and certainly more
15 prejudicial than probative.

16 THE COURT: Okay.

17 MR. BOGLE: The relevant language, Your Honor, in the
18 *White* case is on page 6 and 7, in the *Corley* case on pages 3
19 and 4, and in the *Ettel* case on page 3. The *Ettel* case makes
20 a citation back to *White* as well.

21 (Whereupon, there is a brief pause in the proceedings.)

22 THE COURT: All right. In the *White* case, *White* being
23 375 S.C. 1, Mr. Bogle has referenced page 6 and 7 of that
24 opinion, but I think he is referring to page 8 and 9 of the
25 actual opinion. Is that right, Mr. Bogle?

1 MR. BOGLE: Yes, Your Honor.

2 THE COURT: When he's referring to 6 and 7, I think he's
3 referring to page 6 and 7 of the printed out copy from maybe
4 Westlaw.

5 MR. BOGLE: Oh, I'm sorry, sir. I was going by the, you
6 know, the page numbers, the page numbers, not the Westlaw.

7 THE COURT: Right.

8 MR. BOGLE: I mean not the Westlaw numbers at the top.

9 THE COURT: You weren't going by the actual case page
10 number.

11 MR. BOGLE: I was.

12 THE COURT: You were or you weren't?

13 MR. BOGLE: Well, you know, my page 6 is page -- actually
14 it's page 7 of 10.

15 THE COURT: That's right.

16 MR. BOGLE: The upper right hand corner of page 7 ---

17 THE COURT: If you look down in the far right column and
18 at the bottom one-fifth where it has star nine? On page 6?

19 MR. BOGLE: Yes, sir.

20 THE COURT: On page 7 of 10.

21 MR. BOGLE: Right, I see it.

22 THE COURT: Down at the bottom, do you see the star nine?

23 MR. BOGLE: Mm-hmm.

24 THE COURT: I think that's the actual page number of the
25 opinion.

1 MR. BOGLE: Oh, yeah, I'm just talking about the Westlaw
2 printout pages.

3 THE COURT: Okay, thank you.

4 MR. BOGLE: What it would be in the book.

5 THE COURT: I just wanted to make sure you and I were on
6 the same page.

7 MR. BOGLE: Yes, Your Honor.

8 THE COURT: Anyway, in this *White* case, it goes on to
9 state in page 9 of the opinion -- It's page 9 of the opinion,
10 which is the book page number, page 7 on the printout version,
11 page 8 of 10 in the printout version. Our Appellate Court
12 goes on to state that our Act has been modeled after the
13 Kansas Act.

14 It cites a Kansas case where the defendant challenged the
15 introduction of prior uncharged conduct. Here we at least
16 have charged conduct, whether it resulted in a true bill, a no
17 bill in this particular situation, in various situations
18 relating to Mr. McBride.

19 But in the *White* case, the Court cites a Kansas case,
20 which was *In the Matter of Hay*, where the defendant challenged
21 the introduction of prior uncharged conduct. We at least have
22 charged conduct here and while I certainly understand your
23 concern, Ms. Peace, I think the law is clear that evidence of
24 prior conduct, which is charged and uncharged, according to
25 case law is material evidence in a Sexually Violent Predator

1 case and therefore, I'm going to respectfully deny your
2 motion, but your objection is so noted for the record. Okay?

3 MS. PEACE: Thank you, Your Honor.

4 THE COURT: Anything further?

5 MS. PEACE: Not from the defense, Your Honor.

6 THE COURT: Okay.

7 MS. PEACE: Except for a question.

8 THE COURT: Yes, ma'am?

9 MS. PEACE: To protect the record, how would the Court
10 like me to handle renewing my objections?

11 THE COURT: I mean I think the law requires that you
12 object at the time ---

13 MS. PEACE: Okay.

14 THE COURT: --- just to make a note for your objection.
15 I don't want you to, you know, waive that. You know, I think
16 the law requires that you object and me make a ruling on it.
17 I'm not going to require that you give a continuous objection,
18 but certainly I want you to make sure that it's protected for
19 your client.

20 MS. PEACE: Thank you, Your Honor.

21 THE COURT: Mr. Bogle? And you can just say previous
22 objection, so noted for the record, and I will so note it.

23 MS. PEACE: Yes, Your Honor.

24 THE COURT: Okay. All right, anything else, Mr. Bogle?

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

1 MR. BOGLE: There are none, Your Honor.

2 THE COURT: By the -- by Ms. Peace for Mr. McBride?

3 MS. PEACE: None, Your Honor.

4 THE COURT: All right, Mr. Bogle, you're recognized for
5 opening statements.

6 MR. BOGLE: Thank you, Your Honor, may it please the
7 Court. Ms. Peace, Mr. Allen, ladies and gentlemen, my name is
8 Jim Bogle. I introduced myself earlier. I'm with the
9 Attorney General's Office out of Columbia.

10 Now people sometimes wonder why we're here and not your
11 solicitor or your county attorney or someone else and the
12 reason is that when they wrote this law, the law that you will
13 be applying today, the General Assembly said the Attorney
14 General's Office is the office that handles these cases.
15 There's two of us. Lloyd Flores and I have the state divided
16 in half. We have different parts of the state and I have this
17 judicial circuit which puts me in Florence and Marion
18 Counties.

19 Now this case is about -- It's a civil commitment case.
20 Jimmy Mac McBride has been convicted of certain sexual crimes
21 and sexually violent crime as defined by the statute. It's
22 called criminal sexual conduct with a minor in the second
23 degree. The victim was his 11-year-old daughter. This
24 happened in 2005. Now he has finished his prison sentence,
25 he's done with that, and he's being held until we decide this

1 thing today. That's what the law says is supposed to happen.

2 Here's what we have to prove. We are saying to you
3 through our evidence that he's been convicted of a sexually
4 violent crime. That's one of the things that we have to prove
5 and he has been. It's criminal sexual conduct with a minor in
6 the second degree and that is a sexually violent crime. There
7 is a list of about 16 of them in the law.

8 The second issue and it's a little more difficult, it
9 requires a lot of thought from all sides, does Mr. McBride
10 suffer from a mental abnormality or a personality disorder
11 that makes him likely to reoffend in the same way when he gets
12 out unless he's confined in a secure place for long term
13 control, care and treatment?

14 So essentially what we're asking you to do and what this
15 trial is about is whether or not he has that mental
16 abnormality or that personality disorder. Dr. Jeffrey Musick
17 was appointed by the Court. He's a psychologist from the
18 Department of Mental Health. That's him sitting over there.
19 He was appointed by the Court back in the summertime to
20 conduct the evaluation and his evaluation determined that,
21 yes, Mr. McBride does have a personality disorder.

22 It's called antisocial personality disorder and Dr.
23 Musick will explain more to you exactly what that means and in
24 the context of that disorder, coupled with the crimes he's
25 convicted of both in Florida and here and the other underlying

1 offenses that he's been charged with, presents a pattern and
2 the pattern is one that establishes that he has this problem
3 that makes him likely to reoffend unless he's confined for
4 secure control and treatment and by secure what I mean is it's
5 a confined location. He can't get out. It's run by the
6 Department of Mental Health.

7 You get treatment there for the mental abnormality or
8 personality disorder you might have. You're allowed to be
9 released at some point in time. When the Department says
10 you're safe to be at large, then you're released. That's on
11 down the road. The issue today is should he go in.

12 Now like the judge said at the beginning, in most civil
13 cases tried in the Court of Common Pleas where you are today,
14 like an auto wreck case or a medical malpractice case or a
15 contract case, the burden would be upon one side to prove to
16 you by a preponderance of the evidence, in other words, 51
17 percent. Because Mr. McBride's liberty is at stake, the
18 General Assembly placed a harsher burden, a stronger burden on
19 the State when it wrote this law.

20 So I have to prove to you -- We have to prove to you
21 through our witness and through the testimony and the evidence
22 you'll receive beyond a reasonable doubt that Mr. McBride is a
23 sexually violent predator and the judge will explain to you
24 what that burden of proof means. It's the same burden of
25 proof as though this were a criminal case although it is not.

1 The State has to prove to you beyond a reasonable doubt that
2 Jimmy Mac McBride is a sexually violent predator and again,
3 the judge will tell you what that burden of proof means.

4 Now because of the nature of the crimes involved here,
5 there's going to be some stuff from the witness stand that's
6 probably going to be pretty unpleasant to hear, but bear with
7 me and we'll try and get through it as quick as possible. Our
8 job is to present the evidence to you. You examine the
9 exhibits, the copies of the convictions, and then make a
10 decision, again beyond a reasonable doubt whether or not Jimmy
11 Mac McBride is a sexually violent predator.

12 I'd like to thank you for your service, taking time out.
13 It's a really pretty day outside today, although there's a lot
14 less pollen in here than there is out there. Again, thank you
15 for your service and we look forward to presenting this case
16 to you.

17 THE COURT: Ms. Peace?

18 MS. PEACE: Thank you, Your Honor. Good afternoon.

19 (Whereupon, many members of the jury respond with "Good
20 afternoon.")

21 MS. PEACE: I'm Sally Peace and I represent the
22 defendant, Mr. Jimmy Mac McBride. I bet a lot of y'all before
23 you got here today you've had never heard of the Sexually
24 Violent Predator statute and Mr. Bogle's done a good job
25 telling y'all what it is. So I'm going to tell you what it's

1 not. I want to tell you how these cases are -- are really
2 different from most civil cases and -- and certainly different
3 from criminal cases.

4 Here's what the first thing is that this case is not
5 about. This case is not about whether or not Mr. McBride
6 there committed a sexually violent offense because he did. He
7 pled guilty to it and he did his time. He's done eight years.
8 He's done just exactly what the State said he had to do, but
9 the State is not ready to release him. They want to keep him
10 locked up and the reason they want to keep him locked up is
11 not because of what he did in the past, but because of what
12 they say he'll do in the future.

13 The other way this is different is that there's no set
14 sentence. When he pled guilty to the -- the first offense,
15 they told him how long he'd have to be in prison, but they're
16 not doing that now. He might be there -- If y'all commit him,
17 you know, he might be there two years, he might be there four
18 years, he might be there for a life sentence. There is no set
19 time that he's going to get out. He'll be sent to a secure
20 facility. This -- This is operated by the Department of
21 Mental Health, but it's owned by the South Carolina Department
22 of Corrections. He'll be locked up in there until they say he
23 can get out.

24 Now here's another way this is different. In most
25 trials, the State, you know, will present evidence, hard

1 evidence, about what the person did. They'll present DNA or
2 fingerprints or they'll put an eyewitness up on the stand and
3 that -- that person can say I'm a hundred percent positive
4 that that man did this, but -- but we're not here about what
5 happened in the past. Remember, we're here about what the
6 State says will happen in the future. So they can't present
7 hard evidence about that, can they? Because there's no DNA
8 evidence, there's no fingerprint evidence that will tell you
9 what a man will do, only what he did, and there's no
10 eyewitness that can tell you about the future.

11 So what the State's going to put up is going to be
12 somebody's opinion, Dr. -- Dr. Musick's opinion based on what
13 Mr. McBride did in the past when he was a lot younger and when
14 he was a lot different man than the man he is today and even
15 that witness is going to tell you that he can't tell you with
16 a hundred percent certainty what Mr. McBride will do in the
17 future. But based on that opinion that's not a hundred
18 percent certain, just somebody's opinion, the State's asking
19 you to commit Mr. McBride to what might be a life sentence.

20 Well, what evidence are we going to offer? First of all,
21 and here's another way it's a little bit different, we don't
22 have to offer any evidence at all because the burden of proof
23 is the State's and it's a high burden, just like Mr. Bogle
24 told you. In most civil cases, it's a preponderance of the
25 evidence, which just means who has got more evidence than the

1 other. So it's just, you know, a little bit on that scale
2 will -- will tip the burden, but no, this is beyond a
3 reasonable doubt. This is a big difference. The State's got
4 to convince you beyond a reasonable doubt about what Mr.
5 McBride will do in the future.

6 But even though we don't have to offer any evidence, we
7 want y'all to know what will happen if you check "no" on that
8 verdict form and tell them that Mr. McBride is not a sexually
9 violent predator. We're going to present evidence to show you
10 that he'll be on GPS monitoring 24/7, he'll have to go to
11 sexual offender counseling at least once a week, he'll have to
12 report to an agent in the Department of Probation and Parole.
13 He'll have to be -- He'll be living where, you know, they know
14 where he is.

15 He's blessed to have a family with strong ties to the
16 community, several of whom are more than happy to take him in
17 and let him live with them and he's got job skills that, you
18 know, while he's living with family, he can be out there
19 looking for a job and looking for a way to contribute to the
20 community.

21 So what are we asking y'all to do? Well, if at the end
22 of all the evidence today, if the State hasn't convinced you
23 beyond a reasonable doubt that Mr. McBride suffers from a
24 mental abnormality or defect that makes him likely to engage
25 in acts of sexual violence if he's not confined somewhere in a

1 secure facility for long term control and treatment, then you
2 have to check "no" on the verdict form and we're going to ask
3 you to tell the State "no", tell them that Mr. McBride does
4 not need to be locked up.

5 Tell them "no" because he has an opportunity to get
6 treatment on the outside and he will get it. Tell them "no"
7 because he'll be supervised. Tell them "no" because he's got
8 family support. Tell them "no" because he's got a chance to
9 go out and get a job where he can support himself. At the end
10 of the day today I'm going to come back and I'm going to ask
11 y'all to check "no" on your verdict form and tell the State
12 "no", that Mr. Jimmy McBride is not a sexually violent
13 predator. Thank you.

14 THE COURT: Mr. Bogle?

15 MR. BOGLE: Thank you, Your Honor, may it please the
16 Court.

17 THE COURT: Yes, sir.

18 MR. BOGLE: We would call Dr. Jeffrey Musick.

19 THE CLERK: Dr. Musick, if you'll come around this way to
20 be sworn, please, sir. If you'll place your left hand on the
21 Bible and raise your right hand, please, sir. Do you solemnly
22 swear or affirm to tell the truth, the whole truth and nothing
23 but the truth, so help you God?

24 DR. MUSICK: I do.

25 THE CLERK: Thank you, sir.

DIRECT EXAMINATION OF DR. MUSICK BY MR. BOGLE

1 (Whereupon, the witness is seated in the witness box.)

2 DR. JEFFREY MUSICK, being first duly
3 sworn, testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. BOGLE:

6 Q: Good afternoon, Doctor.

7 A: Good afternoon.

8 Q: Would you please state for the record your full name and
9 county of residence?

10 A: My name is Jeffrey Earl Musick and I live in Richland
11 County.

12 Q: And Doctor, who are you employed by at the present time?

13 A: I'm employed by the South Carolina Department of Mental
14 Health.

15 Q: And what is your job? What position -- What is your
16 position at the Department of Mental Health right now?

17 A: I'm the Chief Psychologist in what's called the Forensic
18 Evaluation Service.

19 Q: Okay. Have you had specialized training and education in
20 that field?

21 A: Yes, I have.

22 Q: Tell the jury what your educational background is,
23 please?

24 A: I have a bachelor's degree in psychology from Miami
25 University, I have a master's degree in clinical psychology

DIRECT EXAMINATION OF DR. MUSICK BY MR. BOGLE

1 from the University of Florida and I have a doctorate in
2 clinical psychology also from the University of Florida.

3 Q: Can you give us an idea just in general terms when you
4 say psychology, there's something called forensic psychology?

5 A: Yes.

6 Q: What is forensic psychology, meaning what's those two
7 words together?

8 A: Forensic psychology is the application of the science of
9 psychology to issues involving the law.

10 Q: And how would you generally describe what the science of
11 psychology is? What is that involved with?

12 A: Psychology is the study of mind and behavior.

13 Q: Okay. Now, Doctor, are you board certified in forensic
14 psychology?

15 A: Yes, I am.

16 Q: To be board certified, what do you have to do?

17 A: There are four steps. First, you have to pass what's
18 called a credential evidentiary to make sure you have the
19 proper education and training and if you pass the credential
20 review, then you'll take a written examination in forensic
21 psychology and if you pass the written examination, you're
22 allowed to submit samples of your work, usually reports, that
23 are reviewed and if those are judged to be acceptable, then
24 you're allowed to take a three hour oral exam on forensic
25 psychology and if you pass that, then you are considered to be

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1 board certified in forensic psychology.

2 Q: Now, Doctor, how long have you been licensed to practice
3 psychology in the State of South Carolina?

4 A: About eleven years.

5 Q: Okay and have you been previously recognized as an expert
6 witness by the Circuit Courts in South Carolina to testify
7 both in the field of psychology, but also forensic psychology?

8 A: Yes, I have.

9 Q: Approximately how many times?

10 A: Approximately 30, 35 times.

11 Q: Okay.

12 MR. BOGLE: Your Honor, at this time I'd like to offer
13 Dr. Jeffrey Musick as an expert witness in the field of
14 psychology and forensic psychology.

15 THE COURT: Ms. Peace?

16 MS. PEACE: No objection, Your Honor.

17 THE COURT: All right. Before you go any further, let me
18 give the jury ---

19 MR. BOGLE: Yes, sir.

20 THE COURT: --- a brief instruction. Ladies and
21 gentlemen, normally a person cannot give opinion testimony.
22 Normally when a person testifies, they must testify as to what
23 they either saw, heard or sensed by smell or something of that
24 nature.

25 However, there is an exception when someone is qualified

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1 as an expert by education or experience. They are permitted
2 to give their opinion in certain areas if the Court qualifies
3 them that way. This witness will be qualified as an expert in
4 the area of psychology and forensic psychology to give opinion
5 testimony in that area.

6 That does not mean that you must accept the opinion. It
7 is evidence for you to use in any way that you see fit. Okay,
8 Mr. Bogle.

9 MR. BOGLE: Thank you, Your Honor.

10 Q: Now, Doctor, as part of your job, are you required or
11 were you required in the past to evaluate people under the
12 South Carolina Sexually Violent Predator law?

13 A: Yes.

14 Q: And about how many people have you so evaluated?

15 A: Fifty-three.

16 Q: And of those 53, about what number or what percentage
17 have you found did not fit the criteria to be a sexually
18 violent predator?

19 A: I found that in my opinion 72 percent did not meet the
20 criteria as a sexually violent predator.

21 Q: Okay. Now did you as part of your job and pursuant to an
22 order of the Court evaluate Jimmy Mac McBride?

23 A: Yes, I did.

24 Q: As part of that interview -- of that process, did you
25 interview and meet with Mr. McBride?

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1 A: Yes, I did.

2 Q: Is he present in the courtroom today?

3 A: Yes, he is.

4 Q: Would you point him out for the jury?

5 A: He's seated to the right of Ms. Peace.

6 Q: Thank you, thank you. Now in addition to meeting and
7 interviewing Mr. McBride, did you also receive a file of
8 information about him?

9 A: Yes, I did.

10 Q: What type of information was in that file, generally
11 speaking?

12 A: Information about his criminal history, information about
13 sex offenses he has committed or been charged with,
14 information ---

15 MS. PEACE: Your Honor, I'd like to renew my objection
16 for the record.

17 THE COURT: So noted for the record. Please continue,
18 Mr. Bogle.

19 Q: Okay, you can go ahead.

20 A: Information about the sexually violent predator
21 evaluation process. Eventually, we were able to acquire some
22 school records on Mr. McBride. There were records from a
23 victim of Mr. McBride's and some alleged victims from various
24 medical centers. There were records from the Department of
25 Corrections about Mr. McBride and there were some -- some

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1 Social Service records as well.

2 Q: Okay. Now, Doctor, is the type of information, the
3 written information you looked at, is that typical of the type
4 of information relied upon by other experts in your field?

5 A: Yes.

6 Q: And did you consider and rely upon that written
7 information in addition to the interview and whatever testing
8 you did of Mr. McBride? Did you rely upon that written
9 information in forming your opinion about him in deciding
10 whether or not he should be a sexually violent predator?

11 A: I did.

12 Q: Okay. Now are you satisfied you received enough
13 information to make that conclusion?

14 A: Yes.

15 Q: Is there anything that you wanted to get or we tried to
16 get for you that you couldn't get and the absence of that
17 might affect your conclusion?

18 A: Nothing that would affect the conclusions.

19 Q: Okay. Now based upon your interview with Mr. McBride and
20 review of his file, was he convicted of a sexually violent
21 offense?

22 A: Yes, he was.

23 Q: Okay. I'd like to hand you State's Exhibit Number 1.
24 It's an indictment and sentencing sheet here in Marion County,
25 the State versus Jimmy Mac McBride from 2005. Is this a

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1 document you looked at?

2 A: Yes, it is.

3 Q: Okay and what crime is the crime that's reflected on that
4 document?

5 A: Criminal sexual conduct with a minor in the second
6 degree.

7 Q: Okay. I'd like to also hand you State's Exhibit 2,
8 certified copies of records from Jackson County, Florida. Is
9 this also a document regarding a conviction that you looked
10 at?

11 A: Yes, it is.

12 Q: And what's the conviction listed on that document?

13 A: Lewd or lascivious battery.

14 Q: Okay. Now, Doctor, in looking at Mr. McBride's
15 situation, we've talked about convictions. Was it necessary
16 for you to look at situations where he had been charged with a
17 sexual offense but not convicted?

18 A: Yes.

19 Q: And why is that? Why is that important?

20 A: Well, it's important because even charges for sexual
21 offenses that do not result in convictions are what are --
22 what is called risk -- a risk factor for future sexual
23 offending and a risk factor just means something that if
24 present increases the likelihood that someone will sexually
25 reoffend in the future.

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1 Q: Well, is it also -- Was it also necessary for you to make
2 inquiries about his educational history and what happens in
3 the schools that he was at?

4 A: Well, that's a -- that's a routine part of these
5 evaluations and what looking into the educational history can
6 potentially yield is evidence of -- of childhood misbehavior
7 or what's called conduct disorder and these are -- Well, the
8 childhood misbehavior would also be a risk factor for future
9 sexual offending and evidence of conduct disorder would go to
10 support a similar disorder that emerges in adulthood that can
11 satisfy the -- the requirement for a mental abnormality or
12 personality disorder as part of the sexually violent predator
13 criteria.

14 Q: When you were researching the school records on Mr.
15 McBride, did you find anything significant or of use to you
16 regarding the school history?

17 A: Well, there's -- The school records indicate that he'd
18 been -- that during part of his tenth grade year he was
19 committed to the Department of Youth Services, which is now
20 known as the Department of Juvenile Justice, and related to
21 his schooling, Mr. McBride reported to me that he'd been
22 expelled once and also had two suspensions.

23 Q: Okay. Was it also then in -- In this research that you
24 did, did you also conduct telephone or personal interviews of
25 people connected with this case?

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1 A: Yes. I -- By telephone, I interviewed Sergeant Kirby of
2 the Dillon County Sheriff's Office and Detective Wallace of
3 the Marion County Sheriff's Office and I also did a telephone
4 interview with Ms. Juanita White, who was someone who was
5 involved in a romantic relationship with Mr. McBride.

6 Q: What was the significance or what if anything was
7 significant about the interview with Ms. White that
8 contributes to your ultimate opinion on this case?

9 A: Well, nothing specifically contributed to my ultimate --
10 ultimate opinion. She did, however, report that Mr. McBride
11 engaged in physical and sexual violence against her, the
12 latter by forcing her to have sex with him when she didn't
13 want to. She also noted that the physical violence by Mr.
14 McBride occurred on a weekly basis and resulted in her getting
15 bruises and scars. She said she never pressed charges against
16 him because she was afraid of him. For his part, Mr. McBride
17 denied that any of his romantic relationships included any
18 physical violence.

19 Q: Okay. Now, Doctor, let's talk about the offenses and
20 we'll start at the beginning. In your report, will you start
21 at the beginning with the oldest offense and we'll work
22 ourselves forward. Starting with the first one, would you
23 tell what that offense was, what the details were and give us
24 a date also and what was -- what if anything was significant
25 about that particular offense? And I think I'm referring to a

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1 charge in 19 -- around 1988.

2 A: Right, the -- A Dillon County arrest warrant indicates
3 that at age 19, Mr. McBride was charged with criminal sexual
4 conduct second degree for allegedly having sexual intercourse
5 with a 14-year-old female on April ---

6 MS. PEACE: Same objection, Your Honor.

7 THE COURT: So noted. Please continue.

8 Q: Please continue.

9 A: In April of 1988. Other documents indicate that this
10 charge didn't -- didn't go any further because the grand jury
11 didn't see a sufficient basis to continue with the charge.
12 During my interview with Mr. McBride, he said -- he denied
13 engaging in sex with the alleged victim.

14 What I found to be significant about this is related to
15 what I mentioned a little while ago that even having past
16 charges for sexual offenses in the absence of a conviction is
17 still a risk factor for future sexual offending. So since
18 this is a charge from his past that's -- that's a sexual
19 offense and then that's, you know, that goes to increasing the
20 risk that he might sexually reoffend.

21 Q: Okay and were there -- And please continue and discuss
22 any other charges you found leading up to the 2005 conviction
23 which -- which I handed you a minute ago. What other charges
24 after this Dillon County offense did you find on his record
25 and in the documents that you reviewed that you found

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1 significant?

2 MS. PEACE: Same objection.

3 THE COURT: So noted.

4 A: There's an arrest warrant that indicates that Mr. McBride
5 was charged with criminal sexual conduct in the first degree
6 for an incident that occurred in February of 2003 involving a
7 24-year-old female acquaintance. According to the Dillon
8 County Sheriff's Office in an office incident report, Mr.
9 McBride under the pretense of giving -- giving the accuser a
10 ride home, drove her to a remote location, threatened her life
11 and had non-consent -- non-consensual sexual intercourse with
12 her. This Dillon County Sheriff's Office incident report also
13 indicates that she cried and begged Mr. McBride not to hurt or
14 kill her and told him that she was menstruating.

15 A -- Court records from Dillon County indicates that this
16 charge didn't go any further than being a charge because the
17 alleged victim didn't want to appear before a grand jury.
18 During my interview with Mr. McBride, he reported that he and
19 the alleged victim had consensual sex, but that he reneged on
20 giving her cocaine in exchange for the sex, so she accused him
21 of the sexual assault.

22 What I found significant about this charge was again it's
23 a prior sexual charge and as I mentioned before, prior sex
24 charges even in the absence of a conviction are risk factors
25 for future sexual offending.

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1 Q: Okay. What's the next one?

2 A: An arrest warrant shows that Mr. McBride was charged with
3 criminal sexual conduct in the first degree for an incident
4 that occurred in July of 2003. In a statement to the captain
5 of the police department, the accuser, who was a 26-year-old
6 ex-girlfriend of Mr. McBride ---

7 MS. PEACE: Your Honor, I'm going to have to object to
8 all this hearsay in the record. I think he can say that he's
9 been charged, but not what the statements were in the police
10 record without offering the record as evidence.

11 THE COURT: Mr. Bogle?

12 MR. BOGLE: Your Honor, I think that was covered by your
13 ruling earlier by the cases cited when we argued that outside
14 the -- earlier this morning.

15 THE COURT: Come here for a minute.

16 MR. BOGLE: Yes, sir.

17 (Whereupon, a bench conference is held off the record in
18 the presence of the jury, but out of the hearing of the
19 jury.)

20 THE COURT: All right, objection overruled. Mr. Bogle,
21 you may continue.

22 MR. BOGLE: Thank you, Your Honor.

23 Q: Okay, you were talking about the Gaffney charge, CSC,
24 criminal sexual conduct in the first degree, an arrest warrant
25 in Gaffney, South Carolina, and what was the information you

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1 got about that that you found significant?

2 A: The accuser indicated that the -- that Mr. McBride scared
3 her into getting into the shower and made her lie on the bed
4 and hit her in the head and had her put his penis into her
5 vagina. This statement also indicates that he raped and beat
6 her for hours. Some victim records from -- The alleged victim
7 records from the Upstate Carolina Medical Center note that she
8 had an abrasion inside her lower lip and lists the severity of
9 any beating she suffered as mild. These medical center
10 records also note that she said he threatened her with anal
11 sex, he ejaculated in her vagina and expressed the intent to
12 impregnate her.

13 This charge was later dismissed due to a lack of
14 cooperation from the alleged victim. During my interview with
15 Mr. McBride, he reported that he had consensual sex with the
16 alleged victim. He also reported that they had had a romantic
17 fling, but that he had lied to her about being married, so she
18 said that he sexually assaulted her.

19 Again, what I found significant about this was just that
20 here we have another charge for a sexual offense and again,
21 that's a risk factor for sexual reoffending even in the
22 absence of a conviction.

23 Q: And when you say a risk factor, are these risk factors
24 that are accepted by the psychological -- the psychological
25 community by other experts in your field?

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1 A: Yeah, this is a risk factor that has been derived through
2 scientific research.

3 Q: Now turn to the next one, the Marion County offense and
4 this would be State's Exhibit 1, which I handed to you a
5 minute ago right here.

6 A: Yes.

7 Q: Tell us about -- Tell the jury, if you would please,
8 about that conviction, the underlying details and was it a
9 conviction or just a charge?

10 A: This was a conviction. A sentencing sheet shows that Mr.
11 McBride pled guilty to criminal sexual conduct with a minor in
12 the second degree and that this incident involved his 11-year-
13 old daughter and occurred in July of 2003.

14 According to a report from the victim, Mr. McBride asked
15 her to show him how other men had sexually molested her and
16 she agreed. Later, he woke her about three or four o'clock in
17 the morning, asked her to show him how she was molested,
18 pulled her shorts and underwear to the side. At this point,
19 she indicated that she had been molested in the vaginal area.
20 He felt her vaginal area, put his penis in her vagina and
21 ejaculated. These records also indicate that the victim said
22 that he then gave her five dollars and then he made a sign to
23 her with his hand across his throat.

24 The records from the South Carolina Department of Social
25 Services indicate that Mr. McBride denied sexually assaulting

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1 the victim shortly after this incident occurred and that he
2 accused her mother of getting her to make the allegation
3 against him. During my interview with Mr. McBride, he said
4 that he initially denied the charge because he couldn't
5 remember it because he was too intoxicated by alcohol. He
6 also said that he still cannot recall what happened in
7 relation to the incident, but that he can't deny the offense
8 and that his daughter wouldn't lie about him.

9 Q: Is the crime of criminal sexual conduct with a minor in
10 the second degree, is that a sexually violent crime that is
11 listed in the law?

12 A: Yes.

13 Q: Okay. Please continue.

14 A: What I found significant about this incident -- Well,
15 there were two things I found significant about this incident.
16 The first was that it provides some support for a diagnosis of
17 personality disorder, specifically antisocial personality
18 disorder, which is part of the criteria for being found to be
19 a sexually violent predator. You must have a mental
20 abnormality or personality disorder and the --

21 Well, antisocial personality disorder is basically a
22 pattern of disregard for or violation of the rights of others
23 and this disregard and violation of rights can occur in
24 several different ways. Particular to this incident, what we
25 have is an incident of unlawful behavior on Mr. McBride's

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1 part. He was found guilty of this offense.

2 Q: He pleaded guilty, did he not?

3 A: Yes, I'm sorry. He pled guilty.

4 Q: Okay. Go ahead.

5 A: So this is an instance of unlawful behavior and that's
6 one of the criteria that go toward a diagnosis of antisocial
7 personality disorder. The second thing that I found to be
8 significant about this incident was that it provides some
9 evidence of Mr. McBride having serious difficulty controlling
10 his sexual behavior, which is also part of the definition of a
11 sexually violent predator.

12 In fact, there were five aspects of this incident that
13 seemed to indicate that Mr. McBride has serious difficulty
14 controlling his sexual behavior. The first aspect was that he
15 offended against a victim who knew him and could easily
16 identify him and that is his daughter.

17 The second aspect which relates to serious difficulty
18 controlling sexual behavior was that he knew that the victim
19 had previously reported being sexually abused by someone else.
20 So, you know, he offended against a victim who he knew might
21 report it.

22 The third incident -- The third aspect that I think shows
23 some serious difficulty controlling sexual behavior was that
24 his wife -- according to him, his wife and two sons were
25 inside the residence at the time of this offense, which would

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1 increase the risk of being detected if other people are in the
2 residence.

3 The fourth aspect of this incident that suggests serious
4 difficulty controlling sexual behavior was that it occurred
5 just six days after he was arrested for another sexual offense
6 and that's the one I just discussed that happened in the
7 Gaffney area with the -- with the ex-girlfriend. So at the
8 point when he committed this sexual offense against his
9 daughter six days later, he was out on bond and under some
10 degree of home detention for this earlier offense that had
11 just occurred six days before.

12 And finally, the final aspect of this incident that
13 appears to indicate he has some serious difficulty controlling
14 his sexual behavior was that he committed this offense even
15 though he had an appropriate sex partner available to him.

16 Q: So that was his wife?

17 A: Right.

18 Q: Okay. Did he try to explain to you -- You say he didn't
19 deny it? He said he was too drunk? What was his response to
20 you when asked about the incident involving his 11-year-old
21 daughter?

22 A: Well, he told me that he -- that he can't recall what
23 happened, but that he can't deny the offense and that his
24 daughter wouldn't lie about him.

25 Q: Okay, now, Doctor, the next thing, Exhibit Number 2 for

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1 the State is the certified copy of the conviction record from
2 Florida for lewd or lascivious battery. I'll hand you that.
3 Tell the jury about that particular conviction and what you
4 found significant about it relating to Mr. McBride's
5 situation?

6 A: Well, according to a State of Florida charging document,
7 Mr. McBride was charged with lewd or lascivious battery for an
8 incident that occurred in February of 2004. A police report
9 related to this indicates that he asked a 14-year-old female
10 to accompany him to a store across the street to buy sodas,
11 but that they got into a pickup truck instead and parked
12 behind a motel. This report also indicates that he then
13 physically assaulted her and forced her to have sex with him.

14 A Jackson County, Florida, affidavit indicates that Mr.
15 McBride said he allowed the victim to perform oral sex on him
16 in exchange for two bags of drugs, which he told me were
17 powder cocaine. This affidavit also indicates that he thought
18 the victim was 19, though other witnesses reported that he had
19 been told she was 14.

20 During the current evaluation, Mr. McBride said -- During
21 my evaluation, Mr. McBride said he did not know that the
22 victim was underage and he would not have engaged in sexual
23 activity with her if he knew she was 14. He also said that he
24 met the victim at a "prostitution house" and had paid the
25 madam at the prostitution house \$50 for her to perform oral

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1 sex on him. He told me that someone else had given her the --
2 the drugs.

3 Q: Was this a conviction or a trial? A guilty plea or a
4 trial?

5 A: I believe it was a guilty plea. It's not immediately ---

6 Q: Look on the first page in the description of what
7 happened.

8 A: Okay. Well, it says that -- that Jimmy McBride did
9 engage in unlawful sexual activity. I don't see the ---

10 Q: Okay. At the very end, he -- he received five years, I
11 believe down here, to run concurrent with the South Carolina
12 time?

13 A: Yes, that's what he gets.

14 Q: Okay. Now let me ask you this, Doctor. After this, were
15 there any other sexual crimes that you looked at that were
16 significant to you? I believe there was one more, was there
17 not?

18 A: I hadn't finished answering ---

19 Q: I'm sorry.

20 A: --- your initial question about this in terms of what was
21 significant.

22 Q: Okay, I'm sorry. Go ahead. I'm ahead of you. Go ahead.

23 A: In regard to this offense from Florida, what I found -- I
24 found three different things that -- that were significant
25 about it and are related to whether Mr. McBride may be a

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1 sexually violent predator. The first is that there is aspects
2 of this incident that also support the diagnosis of antisocial
3 personality disorder.

4 We have another unlawful behavior. He's convicted of
5 this sex offense and that based on what the victim said, there
6 was also evidence of physical aggression on his part. She
7 said he physically assaulted her. Physical aggression toward
8 others is another criteria for antisocial personality
9 disorder. So those were significant in terms of the
10 diagnosis.

11 In terms of risk factors for being likely to sexually
12 reoffend in the future, there were four items in this incident
13 that seemed to apply. One was that the victim was a stranger
14 to him, that he only met her according to him on the same day
15 as the crime took place. Another risk factor for future
16 offending was that he was unrelated to the victim. That
17 increases one's risk of sexually reoffending.

18 It's another sex charge, so as we've gone over the
19 others, that -- that applies also as a risk factor for future
20 sexual offending and finally, again from the victim's report,
21 there's evidence of hostility on his part in that he
22 reportedly physically assaulted her. So that would also be a
23 risk factor for future sexual offending.

24 Finally, there's also evidence from this incident of him
25 having serious difficulty controlling his sexual behavior and

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1 that's evidenced by he committed this sexual offense while he
2 was still under investigation for the sexual offense against
3 his daughter, which I had just described, and secondly, again
4 he committed this sexual offense even though he had an
5 appropriate sexual partner in his wife -- in the form of his
6 wife.

7 Q: Okay. Now was there another sexual offense that didn't
8 result in conviction which you -- which you also found
9 relevant to your investigation?

10 A: Well, there was. There is another sexual charge that was
11 made against Mr. McBride. In -- in August of 2004, he was
12 charged with criminal sexual conduct in the first degree ---

13 MS. PEACE: Same objection, Your Honor.

14 THE COURT: So noted. You may continue.

15 A: According to an incident report from the Dillon County
16 Sheriff's Office, Mr. McBride was supposedly giving a 24-year-
17 old female acquaintance a ride, but took her to a remote
18 location and asked her if he could touch her. When he was
19 told no, he reportedly choked her, slapped her and told her to
20 pull her pants down. When she did not comply, he reportedly
21 hit her, pulled her clothes down, forced her legs apart,
22 penetrated her, stayed on her for about ten minutes and
23 ejaculated inside her without using a condom.

24 This charge didn't go any further apparently because a
25 grand jury didn't think there was a sufficient basis to go

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1 ahead with it. During my interview with Mr. -- Mr. McBride,
2 he said that he never met the victim and did not sexually
3 assault her.

4 Q: So he totally denies anything to do with that one?

5 A: Yes.

6 Q: Okay. Now, Doctor, can you explain to the jury how it is
7 that past sexual offense behavior relates to future sexual
8 offense behavior? Is that a factor you look at?

9 A: Yes. As I mentioned earlier, it's been -- it's been
10 shown to be -- Past sexual charges have been shown to be
11 associated with future sexual offending and research that's
12 been done on sexual recidivism -- It's called sexual
13 recidivism or sexual reoffending.

14 Q: Okay. What about looking at the respondent's non-sexual
15 offense history, convictions of things other than -- that are
16 not sexually related? Was that something you also found
17 necessary to review?

18 A: Yes. That's something that would be routinely reviewed
19 in evaluations of this sort because non-sexual offense history
20 can provide information about relevant diagnoses for the
21 sexually violent predator statute and can also reveal risk --
22 other risk factors for future sexual offending.

23 Q: Did you find anything significant about his non-sexual
24 offense history, the types of crimes, whether or not probation
25 was revoked or anything like that that you found significant

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1 in the context of today's case, what we're here for today?

2 MS. PEACE: I'm going to renew my prior objection, Your
3 Honor.

4 THE COURT: So noted for the record.

5 A: Yes, I -- I'm sorry.

6 THE COURT: You may continue. Go ahead.

7 A: Yes, I did. In reviewing his non-sexual offense history,
8 I found information that would help support the diagnosis of
9 antisocial personality disorder and I was also able to
10 identify additional risk factors for sexual reoffending.

11 In terms of the diagnosis, of course, his offense
12 history, non-sexual offense history, includes nine
13 convictions. So that would be evidence of unlawful behavior,
14 which is one of the criteria for antisocial personality
15 disorder. It also includes evidence of physical aggression in
16 that five of the convictions were for assault and battery. As
17 I mentioned earlier, physical aggression is one of the
18 criteria for antisocial personality disorder. There's also
19 evidence for another criterion for antisocial personality
20 disorder and that's disregard for safety as evidenced by a
21 conviction for driving under the influence.

22 And finally, related to the diagnosis of antisocial
23 personality disorder, there is also a -- information from the
24 Department of Juvenile Justice that he had -- he was
25 adjudicated delinquent as -- as a child and this also is

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1 relevant to the diagnosis of antisocial personality disorder.

2 In terms of risk factors for sexual reoffending, there
3 were -- there were two -- two aspects of his non-sexual
4 offense history that -- that were notable. One is a history
5 of numerous different sentencing dates. Those were having
6 four or more prior sentencing dates are related to sexual
7 reoffending and also having prior convictions for non-sexual
8 violence, in his case in the form of the assault and
9 batteries, that's also a risk factor for future sexual
10 offending.

11 Q: Now, Doctor, has Mr. McBride had any sex offender
12 treatment while he was at the Department of Corrections?

13 A: The Department of Corrections records indicate that --
14 that he has not and he also told me that he has not had sex
15 offender treatment.

16 Q: What was his attitude to you about whether or not he
17 thought he needed sex offender treatment? Did he say anything
18 about that during your interview?

19 A: Yeah, I asked him about that and he said that he does not
20 currently have any sexual problems and does not need sex
21 offender treatment though he would participate in it if
22 required to do so.

23 Q: Now could you tell the jury did you score Mr. McBride on
24 any instruments which are commonly used in your profession and
25 if so, which one?

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1 A: Well, most importantly, I scored Mr. McBride on a risk
2 assessment instrument for sexual recidivism and what that is
3 is essentially it's a list of risk factors for sexual
4 reoffending and when you fill it out, the person you're
5 filling it about essentially gives them -- I'm oversimplifying
6 this a little bit, but essentially it gives a point for every
7 risk factor on the instrument that they have and then you add
8 up the risk factors and you get a total score on the
9 instrument and you use that total score to see what percentage
10 of other sex offenders with that score were charged with or
11 convicted of new sex offenses.

12 Q: Is this thing called the Static-99R, R for revised?

13 A: Yeah, that's what the name of it is.

14 Q: Okay. Did you run an assessment using the Static-99R?
15 Did you score him on that instrument based on the information
16 that you had?

17 A: Yes, I did.

18 Q: Okay. What score did he get?

19 A: Well, he ended up with a raw score of five.

20 Q: And what's the range? How low can you go? How high can
21 you go on the range on the Static-99R?

22 A: The lowest you can go would be -- excuse me, would be
23 negative three and the highest you could go would be twelve.

24 Q: Okay and a score of five, how does that -- Again, these
25 scores, you say it's based on other sex offenders? What type

DIRECT EXAMINATION OF DR. MUSICK BY MR. BOGLE

1 of research pool is out there that they've done research on to
2 arrive at the data to make up to use the Static-99R?

3 A: Well, let me -- let me look up that specific answer.

4 What the -- The group that Mr. McBride was compared to
5 included samples from 15 different studies of a total of 3,354
6 sex offenders for a five year sexual recidivism rate and a
7 total of 1,642 sex offenders for his ten year sexual
8 recidivism rate.

9 Q: Can you explain to the jury how this assessment tool
10 relates? Give us an example of how that -- of how that -- how
11 that works or what it relates to in our common lives, our
12 ordinary lives?

13 A: Well, I could make a comparison to medicine I guess that
14 might help -- help people understand.

15 Q: Okay, go ahead.

16 A: When you -- When you go to your doctor, your doctor might
17 be wanting to know if you had any risk factors for heart
18 disease. So -- so common risk factors for heart disease are
19 things like high cholesterol and high blood pressure and
20 family history of heart disease. So the more of those that
21 you have, the more likely you are to get heart disease is the
22 basic idea and the same idea applies for sexual recidivism.
23 The more of these risk factors that are related to sexual
24 reoffending that you have, then the more likely it is that --
25 or that you may sexually reoffend.

DIRECT EXAMINATION OF DR. MUSICK BY MR. BOGLE

1 Q: And is this a tool which is used by experts in your
2 field?

3 A: Yes, it's commonly used. In a -- in a survey done in
4 2007, it was reported that -- Let me get the exact number for
5 you. That -- Well, this applies to its predecessor called the
6 Static-99. The Static-99R has the same items, they're just
7 scored a little differently, but 95 percent of the -- of
8 people who conduct these types of evaluations, mental health
9 professionals conduct these types of evaluations, use the
10 Static-99 most or all of the time and as for the Static-99R,
11 there was also a survey from last year that showed that it was
12 used in ten out of twelve state sex offender programs and the
13 next most commonly used instrument of its type is only used by
14 four of those twelve programs.

15 Q: Now what about his score, his score on the Static-99R?
16 In addition to all the other information you found, the risk
17 factors you talk about, the score he got on that instrument,
18 how does that assess him or where did that place him as far as
19 likelihood to reoffend? What category did it place him in?

20 A: Well, of the sex offenders in the sample who had the same
21 score as Mr. McBride, approximately 20 percent of them
22 sexually recidivated during -- within five years and
23 approximately 28 percent of them did so within ten years.

24 Q: Does that make his score worse than a certain percentage
25 -- certain percentage of the offenders out there?

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1 A: Well, his score was higher than approximately 81 percent
2 of a correctional sample of sex offenders.

3 Q: Okay. Now based upon your review of Mr. McBride, based
4 upon your personal interview with him and the documents you've
5 looked at and people you've talked to, do you have an opinion
6 to a reasonable degree of psychological certainty as to
7 whether he has a mental abnormality or a personality disorder?
8 You already named it, but for the record now tell us what it
9 is.

10 A: Yes, it's my opinion that he has antisocial personality
11 disorder.

12 Q: And is antisocial personality disorder a recognized
13 personality disorder by psychologists?

14 A: Yes, it is.

15 Q: Okay. He -- Can you -- And tell us how does that
16 antisocial personality disorder play into his sexual
17 offending?

18 A: Well, some of the characteristics of antisocial
19 personality disorder can set one up for sexual offending. As
20 I mentioned, you know, a willingness to engage in unlawful
21 behavior, a willingness to engage in physical -- physically
22 aggressive behavior, some of those characteristics can, you
23 know, allow one to -- to commit sex offenses.

24 Q: Do you have an opinion also to a reasonable degree of
25 psychological certainty as to whether Mr. McBride -- whether

DIRECT EXAMINATION OF DR. MUSICK BY MR. BOGLE

1 the antisocial personality disorder that he has affects his
2 emotional or volitional capacity so that he is predisposed to
3 commit future sexually violent offenses?

4 A: Yes.

5 Q: And what is that opinion?

6 A: That it does.

7 Q: Okay and by the words emotional or volitional capacity,
8 what am I talking about?

9 A: Well, you're talking about what I was talking about
10 before when I called it a serious difficulty in controlling
11 sexual ---

12 Q: I'm sorry I can't hear you.

13 A: You're talking about what I was talking about before when
14 I called it serious difficulty controlling sexual behavior.

15 Q: And again, you have -- also have an opinion, again to a
16 reasonable degree of psychological certainty, as to whether he
17 has a propensity to commit future sexually violent offenses?

18 A: Yes.

19 Q: And what is that opinion?

20 A: My opinion is that he does.

21 Q: Is that menace to commit future sexual offenses of such a
22 degree that it poses a menace to the health and safety of
23 others?

24 A: It's my opinion that it does.

25 Q: Does he have serious difficulty controlling his behavior,

DIRECT EXAMINATION OF DR. MUSICK BY MR. BOGLE

1 again to a reasonable degree of psychological certainty? Do
2 you have such an opinion?

3 A: It's my opinion that he does.

4 Q: Is that based upon the risk factors you talked about
5 today and the other matters you talked about today?

6 A: Yes, it's based on those.

7 Q: And does this mental abnormality ---

8 A: I'm sorry. Could you repeat that last question? I don't
9 ---

10 Q: Is the opinion you just gave on whether or not he has
11 serious difficulty controlling his behavior, is that based on
12 the risk factors you've talked about in your testimony thus
13 far?

14 A: Well, it was -- it was based on the aspects of the crimes
15 that were suggestive of difficulty controlling his sexual
16 behavior.

17 Q: Okay, okay. Now does this antisocial personality
18 disorder that he has and the way he manifests it in the
19 criminal convictions that he has and the charges, does this
20 make him likely to engage in acts of sexual violence unless he
21 is confined in a secure facility for long term control, care
22 and treatment?

23 A: That's my opinion.

24 Q: Does he meet -- In your opinion, does he meet the legal
25 requirement to be found a sexually violent predator?

DIRECT EXAMINATION OF DR. MUSICK BY MR. BOGLE

1 A: In my opinion, he does.

2 Q: Now if he's found by this jury to be a sexually violent
3 predator, would he be permitted -- would he be offered
4 treatment for his personality disorder?

5 A: Yes.

6 Q: And where would that treatment be offered? Or by -- Let
7 me rephrase that. By what agency would the treatment be
8 offered?

9 A: The Department of Mental Health.

10 Q: Okay and would he be -- Would he have to be confined in a
11 secure place for such treatment?

12 A: Yes.

13 Q: And where is that place located?

14 A: It's located in Columbia.

15 Q: Okay. Is it also on the premises of one of the prisons?

16 A: Yes.

17 Q: If he is committed, would he have the right to petition
18 the Circuit Court for release?

19 A: Yes.

20 Q: How often would that right be afforded him?

21 A: On an annual basis.

22 Q: Okay. Do you know of anything -- Now has he finished his
23 criminal sentence as far as you know?

24 A: Yes, he has.

25 Q: He's facing -- Is he facing any probation as shown on

DIRECT EXAMINATION OF DR. MUSICK BY MR. BOGLE

1 those -- those sentencing sheets you've got in front of you?

2 A: As shown on the sentencing sheets?

3 Q: Yes, sir.

4 A: I don't see anything listed on the sentencing sheets.

5 Q: Okay. Do you know of -- Now we talked about -- You and I
6 talked about community supervision before the trial. Do you
7 remember that?

8 A: Yes.

9 Q: But do you know of anything that would provide him the
10 appropriate sex offender treatment he needs other than being
11 committed to the secure place run by the Department of Mental
12 Health?

13 A: It's my opinion that he meets the criteria for commitment
14 to the Department of Mental Health.

15 Q: Okay. Now if he is released, do you know of anything
16 that can get him the type of sex offender treatment that you
17 believe based upon your evaluation that he needs?

18 A: Well, I didn't -- That wasn't part of what I was asked to
19 evaluate.

20 Q: Okay.

21 A: Whether there were alternatives.

22 Q: Do you believe or do you have an opinion, again to a
23 reasonable degree of psychological certainty, that he meets
24 all the criteria as a sexually violent predator?

25 A: Yes.

CROSS EXAMINATION OF DR. MUSICK BY MS. PEACE

1 Q: So has he been convicted of a sexually violent crime?

2 A: Yes.

3 Q: Does he have a personality disorder that makes him likely
4 to commit sex crimes again?

5 A: In my opinion, he does.

6 Q: And is it the type of thing that makes him likely to
7 commit those crimes unless he is confined for long term
8 control, care and treatment?

9 A: Yes.

10 Q: And is that treatment offered by the Department of Mental
11 Health in Columbia?

12 A: Yes.

13 Q: Okay. Doctor, thank you for your testimony. Please
14 answer any questions counsel may have or the judge may have
15 for you.

16 THE COURT: Ms. Peace, cross examination.

17 MS. PEACE: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MS. PEACE:

20 Q: Dr. Musick, I just have a few questions. First of all,
21 just to be clear, you are being paid by the State, right?

22 A: I'm paid by the Department of Mental Health.

23 Q: Yes, sir, and that's the South Carolina Department of
24 Mental Health. Is that correct?

25 A: Yes, it is.

CROSS EXAMINATION OF DR. MUSICK BY MS. PEACE

1 Q: And I believe y'all talked about whether or not Mr.

2 McBride had had any sexual offender treatment while he was

3 incarcerated at Evans. Do you know if that treatment was

4 available to him at Evans? Do you know whether or not they

5 offered it?

6 A: Not specifically. I know that the main treatment, sexual

7 offender treatment program run by the Department of Mental

8 Health, which has since been discontinued, was not at Evans.

9 It was at a prison in Columbia.

10 Q: So as ---

11 A: So I don't know what they might have had by the way of

12 sexual offender treatment at the Evans Institution.

13 Q: I'm sorry. I think I ran over the first part of your

14 statement. Did you say you didn't know what they offered at

15 Evans?

16 A: Right. I don't know what was available at Evans, but the

17 main sex offender treatment program through the Department of

18 Corrections is not located at Evans.

19 Q: And -- and if someone was confined at Evans, then they

20 would not have had access to that program?

21 A: Unless they were transferred to be in the program, which

22 can happen.

23 Q: Okay, all right. Now I believe you testified that --

24 that you believe that Mr. McBride suffers from a mental

25 abnormality or defect that makes him likely to engage in acts

CROSS EXAMINATION OF DR. MUSICK BY MS. PEACE

1 of sexual violence if he's not confined in a secure facility
2 and that mental abnormality, your diagnosis was antisocial
3 personality disorder. Is that right?

4 A: Correct.

5 Q: But I noticed that you didn't diagnose him with
6 paraphilia, did you?

7 A: No, I didn't.

8 Q: Can you tell us what paraphilia is, please?

9 A: Paraphilia -- Well, paraphilia is a disorder
10 characterized by sexually abnormal or deviant interests or
11 behavior.

12 Q: Okay and -- and there's different kinds of paraphilia.
13 Is that right?

14 A: Yes.

15 Q: Paraphilia is like the umbrella term. Is that a fair ---

16 A: Yes, that's a category of sex offenses or a category of
17 sexual disorders.

18 Q: And so what conditions would fall under that umbrella
19 that we call paraphilia?

20 A: Exhibitionism, pedophilia, frotteurism ---

21 Q: Can -- can you tell us what those are, please, just for
22 those of us that -- that don't have a lot of psychological
23 training.

24 A: Sure.

25 Q: What's pedophilia?

CROSS EXAMINATION OF DR. MUSICK BY MS. PEACE

- 1 A: Pedophilia is sexual attraction to pre -- prepubescent
2 children and accompanying urges to engage in that behavior or
3 actually engage in sexual behaviors with children.
- 4 Q: But you did not diagnose Mr. McBride with that. Is that
5 correct?
- 6 A: That's correct.
- 7 Q: Okay. All right and I'm sorry. What were the other
8 kinds of paraphilia?
- 9 A: Exhibitionism is another example of paraphilia. That's
10 when the person is sexually aroused by exposing his sex organs
11 to unsuspecting strangers like a flasher would be the common
12 use term for it.
- 13 Q: But he doesn't have that either?
- 14 A: No.
- 15 Q: Okay.
- 16 A: I didn't find that.
- 17 Q: Sexual sadism, is that a category of paraphilia?
- 18 A: That's a paraphilia also.
- 19 Q: That's where they enjoy hurting people I guess?
- 20 A: That's right. That's when they enjoy hurting. Hurting
21 people is sexually arousing to them.
- 22 Q: But he doesn't have that either?
- 23 A: No.
- 24 Q: Okay.
- 25 A: I didn't find that.

CROSS EXAMINATION OF DR. MUSICK BY MS. PEACE

1 Q: All right. So, but he does have antisocial personality
2 disorder?

3 A: Correct.

4 Q: Now I believe y'all have a -- a way of -- of diagnosing
5 these things. It's called a DMS -- DSM-IV?

6 A: Yes, DSM-IV-TR.

7 Q: How does that work?

8 A: Well, that's -- The DSM-IV-TR is just a -- a catalog of
9 recognized mental disorders and so when you diagnose someone
10 with a mental disorder or in the case of a sexually violent
11 predator a mental abnormality or personality disorder, you use
12 the -- you use diagnoses that have been accepted by the
13 professional community, by psychiatrists and psychologists,
14 and those are the ones that are listed in the DSM-IV. TR is
15 the latest version.

16 Q: Okay and so the DSM-T4 [sic.] would -- would list the
17 characteristics that a person with antisocial personality
18 disorder would have. Is that right?

19 A: Yes.

20 Q: What are those characteristics?

21 A: Well, the ones that are -- that I thought applied to Mr.
22 McBride -- There are seven characteristics total and I thought
23 five of those applied to him. You only need three to make a
24 diagnosis, but the ones that I found to apply to Mr. McBride
25 were engaging in unlawful behaviors, deceitfulness,

CROSS EXAMINATION OF DR. MUSICK BY MS. PEACE

1 impulsivity, physical aggressiveness, and disregard for safety
2 of himself and others.

3 Q: Okay. Can you tell me in the just the general population
4 of all of us walking around out here about how many people
5 would exhibit those characteristics do you think?

6 A: That would meet the diagnosing criteria for antisocial
7 personality disorder?

8 Q: Yes, sir.

9 A: It's more common in men than women and I'd actually have
10 to look up the percentage of men who do meet that -- the
11 definition of that diagnosis, but I think it's -- it's under
12 five percent.

13 Q: Okay and again, those characteristics are a willingness
14 to engage in unlawful behavior, so you're saying a willingness
15 to break the law, right?

16 A: Yes.

17 Q: There are people who might get in fights?

18 A: Right.

19 Q: Or, you know, be physically aggressive?

20 A: Right.

21 Q: People who might lie?

22 A: Yes.

23 Q: People who are impulsive, right?

24 A: They do things without thinking, yes.

25 Q: Mm-hmm and who don't really think about their own safety

CROSS EXAMINATION OF DR. MUSICK BY MS. PEACE

1 or that of people around them?

2 A: They do things that could endanger themselves or others,
3 yes.

4 Q: Well, wouldn't that be pretty much everybody in prison
5 though?

6 A: There are a large percentage of individuals in prison who
7 are diagnosable with antisocial personality disorder. That's
8 correct.

9 Q: Okay. So, but they're not sexually violent predators,
10 are they?

11 A: Well, some of them are and some of them aren't.

12 Q: Okay and so ---

13 A: Some people with antisocial personality disorder never
14 commit a sex offense.

15 Q: Okay.

16 A: So obviously they wouldn't be considered sexually violent
17 predators.

18 Q: Okay, all right. Now is antisocial personality disorder,
19 is that generally something that people would get committed to
20 a mental institution for having?

21 A: Generally not.

22 Q: Okay and it's not something that if you were accused of a
23 crime, it wouldn't be a defense, would it?

24 A: Well, I think what you're talking about is like a defense
25 of not guilty by reason of insanity ---

CROSS EXAMINATION OF DR. MUSICK BY MS. PEACE

1 Q: Mm-hmm.

2 A: --- based on a mental illness and general antisocial
3 personality disorder wouldn't be a basis for that sort of
4 defense.

5 Q: And is that because it's possible for somebody with
6 antisocial personality disorder to control his actions?

7 A: Yes. People with antisocial personality disorder can
8 control their actions.

9 Q: Okay and so it's also possible that Mr. McBride, if he
10 were released, would be able to control his actions. Is that
11 right?

12 A: Yes. I don't know whether Mr. McBride is going to -- if
13 he's released is going to sexually reoffend or not.

14 Q: All right and in fact, you reviewed -- As part of your
15 report, you reviewed Mr. McBride's disciplinary history from
16 SCDC. Is that right?

17 A: Yes, I did.

18 Q: And you found that he had no disciplinary convictions the
19 whole time he was in prison. Isn't that right?

20 A: That's correct.

21 Q: Okay and I believe you -- you noted in your report that
22 the folks from the detention center describe him as a model
23 prisoner?

24 A: The -- The detention center officer who transported him
25 to one of the interviews I had with him did describe him that

CROSS EXAMINATION OF DR. MUSICK BY MS. PEACE

1 way.

2 Q: Okay and his qualifying offense as we call it, the
3 criminal sexual conduct with a minor, that was with his
4 daughter. Is that right?

5 A: Yes.

6 Q: And so isn't it true that people who are convicted of
7 incest have really the lowest rate of reoffending?

8 A: Yes. People convicted of -- of sex crimes against family
9 members, they reoffend at a lower rate than people who
10 sexually offend against non-family members.

11 Q: Okay and ---

12 A: But I mean to be fair, we have to remember that the
13 Florida conviction was against a non-family member.

14 Q: Okay, all right and isn't it also true that the older
15 people get, the less likely they are to reoffend?

16 A: Yes. As -- as people age, the likelihood of them
17 sexually reoffending decreases beginning usually around about
18 around the age of 40, even more so when you get to be about
19 age 60.

20 Q: All right. So just to -- to kind of sum it all up, you
21 really cannot say with a hundred percent certainty that Mr.
22 McBride would reoffend if he were released?

23 A: No and that's not what I have done in my evaluation. No
24 one can predict the future that way.

25 Q: Okay, thank you. I don't have any more questions.

REDIRECT EXAMINATION OF DR. MUSICK BY MR. BOGLE

1 A: Thank you.

2 THE COURT: Mr. Bogle, any redirect?

3 MR. BOGLE: Just one, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. BOGLE:

6 Q: Doctor, counsel asked you about the age, how the older a
7 person gets, the less likely they are to reoffend. Is age one
8 of the things that factor into the computation of his score on
9 the Static-99 Revised?

10 A: Yes. In fact, Mister -- Because of Mr. McBride's age, he
11 received a credit. He had one point subtracted from his total
12 score because he was over 40 years old.

13 Q: So his age helped him, if you will, on that score?

14 A: You could say it that way, yes.

15 Q: But it did not change your opinion?

16 A: No. It was factored into my report of his score earlier.

17 Q: Thank you, sir.

18 MR. BOGLE: Your Honor, thank you.

19 THE COURT: Ms. Peace, anything else?

20 MS. PEACE: Nothing further, Your Honor.

21 THE COURT: Thank you. Sir, you may step down.

22 (Whereupon, the witness leaves the stand at 3:01 p.m.)

23 DR. MUSICK: Am I excused?

24 THE COURT: If Mr. Bogle makes that motion.

25 DR. MUSICK: I'm sorry, Your Honor.

26

1 MR. BOGLE: Your Honor, I'd like to request at this time
2 that -- We have no further questions and I ask this witness be
3 excused to go back to Columbia.

4 THE COURT: All right, any objection, Ms. Peace?

5 MS. PEACE: None, Your Honor.

6 THE COURT: Now, sir, you may be excused. Thank you for
7 being here.

8 DR. MUSICK: Thank you, Your Honor.

9 (Whereupon, the witness leaves the courtroom.)

10 MR. BOGLE: Your Honor, at this time the State would
11 rest.

12 THE COURT: Okay. All right, ladies and gentlemen, the
13 State has presented its case in this matter. I am going to
14 have to ask you to step to the jury room for a moment while we
15 take up a matter outside your presence. Do not discuss the
16 case. Do not discuss the case until you are instructed to do
17 so. I'll get you back out here as quickly as possible.

18 (Whereupon, the jury leaves the courtroom at 3:02 p.m.)

19 THE COURT: All right, Ms. Peace, any motions?

20 MS. PEACE: Yes, Your Honor. At this time, I'd like to
21 move for a directed verdict in the -- for the defense on the
22 basis that the State has not carried its burden of showing
23 that Mr. McBride suffers from a mental abnormality or
24 personality disorder that makes it likely that he will
25 reoffend. I would submit that antisocial personality disorder

1 is not sufficient to support a finding that he's a sexually
2 violent predator. I would also like to renew all of my pre-
3 trial motions.

4 THE COURT: All right. Pre-trial motions so noted for
5 the record and as previously ruled upon they are respectfully
6 denied. Likewise, I would respectfully deny your motion for a
7 directed verdict. I think there has been enough evidence
8 presented for the jury members to decide if Mr. McBride does
9 suffer from a mental abnormality or personality disorder that
10 makes him likely to engage in acts of sexual violence if not
11 confined in a secure facility for long term control, care and
12 treatment. Therefore, I respectfully deny your motion at this
13 time.

14 MS. PEACE: Thank you, Your Honor.

15 THE COURT: Anything further at this time?

16 MS. PEACE: No, Your Honor.

17 THE COURT: All right, Mr. Bogle?

18 MR. BOGLE: Nothing further.

19 THE COURT: I saw several people come in. Are those your
20 people?

21 MS. PEACE: Yes, Your Honor, sorry about that. Those
22 were -- Those -- Two of those ladies are going to be witnesses
23 for my client and I didn't want them in the courtroom since
24 they were going to be witnesses.

25 THE COURT: All right.

1 the law and I want to remind you that arguments are not
2 evidence in this case. They're not evidence in this case.
3 Mr. Bogle, you're recognized for closing arguments.

4 MR. BOGLE: Thank you, Your Honor, may it please the
5 Court, Ms. Peace, Mr. Allen. Well, the first thing you need
6 to know is I'm not one of these television lawyers. I've got
7 to have notes in front of me. I've sort of got to have
8 something to refer to, but let me -- let me start off and say
9 this: First off, thank you for doing your job. Okay? We've
10 taken almost a day and a half out of your lives to come down
11 here and do this. It's a very important case not only to Mr.
12 McBride, but also the State of South Carolina and the people
13 here in Marion County and I appreciate you taking the time out
14 of your lives to spend it right here with us.

15 Now when you're done with this, you're going to have
16 friends and neighbors who might have served on jury duty
17 before and you'll probably talk to them about your experiences
18 and you'll find out that they served on cases, maybe they were
19 criminal cases like a robbery or a shooting or something like
20 that or maybe a civil case like a property dispute or a car
21 wreck, and they'll tell you, well, we had witnesses that
22 somebody testified I saw that guy hold a gun or I saw that man
23 run the red light or I saw that lady build her a room on her
24 house that extended over my property line without asking me
25 first, direct evidence, people saw things.

1 This case isn't like that. As you can tell, it hasn't
2 been like that at all. We have had to rely on expert
3 testimony, opinion evidence if you will, from Dr. Musick, who
4 testified yesterday, and that's because that's the way this
5 law is. The Sexually Violent Predator law was passed in 1998
6 and here's what the General Assembly said. They found that a
7 mentally abnormal and extremely dangerous group of sexually
8 violent predators exists who require involuntary civil
9 commitment and that's what this case is about today.

10 The burden is on the State to prove to you two things.
11 Number one, has Jimmy Mac McBride been convicted of a sexually
12 violent crime and he has. We have the exhibit in evidence.
13 The criminal sexual conduct with a minor in the second degree
14 is a sexually violent crime and I believe the judge will
15 explain that to you in his charge.

16 The second issue though, we have to also prove this
17 beyond a reasonable doubt, is does he have some kind of mental
18 abnormality or a personality disorder that makes him likely to
19 commit the same type of crime again unless he's confined for
20 mental health treatment. That's the issue here today and to
21 do that, we turn to the expert testimony of Dr. Musick.

22 Now is this a prediction? Can we predict anything? Can
23 we predict with absolute certainty this is going to happen?
24 Of course not, but that's not what the law requires. There's
25 very few things in life you can predict with absolute

1 certainty and the law doesn't require that. Instead, it
2 requires we prove it to you beyond a reasonable doubt and
3 let's see what we've done here.

4 Dr. Musick is an expert witness appointed by the Court.
5 He wasn't hired by my office. He wasn't hired by Ms. Peace's
6 office. He's appointed by the judge to do an evaluation and
7 like laying bricks in a wall, he built a foundation around his
8 report. He found a number of risk factors, certain things
9 that had happened in Mr. McBride's life that amounted to risk
10 factors.

11 Remember the heart disease example he talked about? If I
12 go to my doctor tomorrow and my doctor finds out I've got high
13 blood pressure and high cholesterol and shortness of breath
14 and maybe some chest pains once in a while, he's going to
15 diagnose me as a possible candidate for heart disease and
16 he'll prescribe me medicine to hopefully correct it. He may
17 even do surgery. Now the doctor doesn't know that's going to
18 happen for sure, but he knows it's very likely, likely enough
19 to prescribe the right kind of medicine.

20 Now how does he know that? Is it just from me? No.
21 It's because prior to me walking in his office, there's been
22 thousands of patients walking in with hundreds of doctors
23 around the world with these kind of symptoms and the doctors
24 look at these kind of symptoms and they know from their
25 training that based on thousands of previous patients with

1 those type of symptoms, this guy's got heart disease.

2 Well, that's what it is with sex offenders. If there are
3 certain things they've done in their lives, certain things
4 that's happened to them, you add those up. They're called
5 risk factors and the more of them there are, based on studies
6 of thousands of similar offenders, then the greater the chance
7 they're going to reoffend and that's what we have here.

8 That thing called the Static-99 Revised, that scoring
9 instrument, he scored Mr. McBride on, that instrument. It's a
10 type of test that's used by psychologists all around the world
11 in these types of cases. He gave him a score that was worse
12 than 80 percent of the sex offenders in the state.

13 Can it predict with absolute certainty? No, but does it
14 make him so likely to commit an act of sexual violence that it
15 requires him to be confined for treatment as opposed to
16 outpatient treatment? Yes, but that's one factor he relied
17 upon, not the only one. He's careful not to hang his hat just
18 on one thing.

19 In his review of Mr. McBride's situation, he found that
20 Mr. McBride has been arrested six times for sexual crimes.
21 Forget the non-sexual criminal activity, I'm telling you six
22 times for sexual crimes. Now they're not all convictions and
23 keep that in mind, but what we have from '88 to 2004, six
24 arrests for a criminal sexual type crime against somebody.

25 Now one of them resulted in a conviction here in Marion

1 County and that's the sexually violent crime against his 11-
2 year-old daughter. The other one is a crime that's not
3 necessarily a sexually violent crime here in South Carolina,
4 but he was convicted down in Florida for that lewd and
5 lascivious act again on an underage girl, 14 years old.

6 But five -- There's six arrests in total. Now a long
7 time ago, I heard from a friend who had been practicing law a
8 lot longer than me. He says, "You know, Jim, the first time
9 something happens, it's happenstance, the second time,
10 coincidence, third time, you better watch out."

11 Six times and under the law and under the rules that Dr.
12 Musick operates by, that psychologists like him do, you
13 consider those arrests. You're looking for some kind of
14 pattern of behavior that makes this man of the type of danger
15 where he needs to be committed for outpatient treatment -- for
16 inpatient treatment as opposed to getting it outpatient.

17 The personality disorder he diagnosed was called
18 antisocial personality disorder. That is a recognized thing
19 in the book that counsel described or whatever, the DSM-IV,
20 Diagnostic and Statistical Manual 4th Edition, the one that all
21 psychiatrists and psychologists go by. It's in the book. He
22 was diagnosed with that and based upon his risk factors, it
23 was set up that he is likely to reoffend in a sexually violent
24 manner, likely enough to be committed.

25 What are those risk factors? Well, there's the criminal

1 conviction we know about, the Marion County offense, State's
2 Exhibit 1. You'll have that to take in the jury room. The
3 personality disorder he was diagnosed with, childhood behavior
4 and then school suspensions, fighting, hostility, impulsivity,
5 conflict of intimate relationships. You know, Dr. Musick went
6 out of his way to talk to that lady who then -- who was the
7 mother of one of his victims to find out what it was like to
8 live with this guy, if it went beyond just normal marital
9 issues and yes, the bruises, the injuries she suffered, but
10 look at the laundry list of things that Dr. Musick testified
11 about.

12 First off, he offended against a victim who could easily
13 identify him, his 11-year-old daughter. She could say, yeah,
14 that's my daddy, that's the guy who offended against me.

15 Second, he offended against a victim that he knew had
16 already reported she'd been molested. So if she's the kind of
17 person who's smart enough to report to the police or to the
18 authorities or to her mother, I've been molested by somebody
19 else, she's going to report him. That's a very risky victim
20 to go after.

21 Third, he committed a sexual offense when his wife and
22 two sons were in the residence. Easy detection, they could
23 easily be detected. It wasn't out in a remote place or
24 faraway place or around the Walmart or something like that or
25 at a construction site. It was in the house.

1 The next thing, he commits a sexual offense just six days
2 after being arrested on another sex charge and while on bond
3 or perhaps even some degree of home detention. The next
4 thing, he commits a sexual offense while under investigation
5 for another sexual offense and then finally, he commits a
6 sexual offense when he's got an appropriate -- age appropriate
7 sexual partner, his wife in the home, yet he goes after the
8 daughter.

9 All of these things like bricks in a wall, they add up
10 and Dr. Musick was very careful to list out each of them,
11 building a foundation of risk conclusion. His conclusion was
12 this man is likely enough to commit a sexually violent crime
13 that he should be civilly committed for treatment.

14 The defense presented as witnesses two wonderful women,
15 who I believe love the defendant -- love the respondent very
16 much, Ms. Johnson, who is his sister, and Ms. Wright, who is a
17 cousin, and as I understand it, Ms. Johnson has the house at
18 Greenville -- at Greenwood Court that's listed in that
19 probation, that community service -- community supervision
20 report that was introduced into evidence, but that house, even
21 though it's there, is not ready to live in. That house does
22 not yet have power. It's not hooked up yet. So it's not
23 livable just yet. So I'm not sure where Mr. McBride would go
24 to live if he is released.

25 He might go live with his cousin, Ms. Wright, but, you

1 know, as much as she loves him, as much as her efforts were
2 made to keep him under control, bear in mind that when he was
3 living with her, he was arrested on at least four of those six
4 times. So I guess staying there wasn't enough.

5 Now Mr. Collins testified yesterday -- yesterday about
6 the community supervision. He's facing two years of community
7 supervision run by the Parole and Probation Department. Well,
8 unfortunately, it's not really two years because the clock for
9 that started running when he finished his prison term, so he's
10 got about eight months left on that.

11 Can they revoke him for violating something? Yeah, they
12 can, but up to one year at a time. "Up to" means either
13 nothing or the whole year and they got to stop doing that in
14 2013 when the whole years of his sentence runs out. That's
15 only fourteen months from now and they can't really do
16 anything until he -- They can't go after him or revoke him
17 until he commits some type of offense first. There's nothing
18 to prevent him from contacting his victims or offending again
19 when he goes out.

20 So the question there is, I'm not sure that outpatient
21 treatment with Dr. Federer over in Florence is the best idea.
22 In fact, I don't believe they even have an appointment set up
23 for him. You know, if he's -- if he's released by you, does
24 he have an appointment like to go see Dr. Federer next Tuesday
25 at 11:00 in the morning? No, he's got to be still set up and

1 transportation would be depending on his relatives. So it's
2 hard to say if that's really going to work and the question
3 is, based upon the personality disorder he has, the situation
4 where he's bad enough where he needs inpatient treatment in a
5 confined place.

6 Bear in mind, when Dr. Musick, he's done about 50 or 60
7 of these evaluations, 72 percent of the time, he comes back
8 saying the guy is not a predator, doesn't need to be
9 committed. So I'd like to say that we're reserving this for
10 people -- The other ones, they just get paroled and go their
11 happy ways, but some people meet that cut and that's what's
12 happened here.

13 The judge will explain to you what's meant by beyond.
14 I'm not going to try to do that. So listen carefully to his
15 description of the law, but I think when all the dust settles,
16 you will conclude that we have proven by that burden of proof
17 that Mr. McBride is a sexually violent predator. He's been
18 convicted of the right kind of crime. He has the mental
19 abnormality or the personality disorder, in this case a
20 personality disorder.

21 Counsel talked about it being -- in cross examination
22 about it being a life sentence. Well, I would suggest to you
23 inpatient treatment, the key to that door is going to be with
24 Mr. McBride. If he recognizes he has a problem and agrees to
25 the right kind of treatment, they got enough people out there.

1 They don't want another one that they don't need. I don't
2 know when he'll be released, but he has a chance once a year
3 to ask the Court, you know, "Judge, I've done well. I'm good
4 to go. I want to get out." And the judge has to have a
5 hearing on that, so he has that right to petition once a year.
6 These people aren't forgotten about. There are safeguards put
7 in the law, but for right now, he fits the model, he fits the
8 criteria.

9 Your Honor, ladies and gentlemen of the jury, thank you
10 very much for your time. I look forward to your verdict in
11 this case and Your Honor, thank you.

12 THE COURT: Ms. Peace?

13 MS. PEACE: Thank you, Your Honor. Well, good morning,
14 again.

15 (Whereupon, many members of the jury respond with "Good
16 morning.")

17 MS. PEACE: Y'all remember yesterday I said that I was
18 going to come back to you this morning and ask you to check
19 "no" on your jury form when you go in there to deliberate?
20 And I want to start out talking about what will happen if you
21 say "no."

22 Well, we know that we're not just going to turn Mr.
23 McBride loose. No, he's going to be going once a week to Dr.
24 Federer, a psychiatrist in Florence, for sex offender
25 counseling. He's going to need to meet regularly with his

1 parole officer in the Marion County Probation and Parole.

2 He's going to be living with family. You met two of his
3 family yesterday. He's going to be looking for a job. He's
4 got job skills. He's proved he's -- he's willing to work and
5 he can hold a job. He's going to be wearing a GPS monitor
6 24/7 so that the County can tell you where he's at any minute
7 of the day.

8 It's true that his sister's house isn't quite ready yet.
9 It got turned down because of the wiring, Mr. Collins said,
10 but it should be ready by the end of the month. In the
11 meantime, they can find him an approved place to stay and
12 he'll be wearing that GPS monitor. So I'm going to ask y'all
13 to check "no" if you don't feel like the State can prove
14 beyond a reasonable doubt what it's got to prove.

15 Now let's go back over it one more time what is it the
16 State has got to prove. First thing it's got to prove is that
17 Mr. McBride committed a qualifying offense. There's a list of
18 offenses that qualify you to be a sexually violent predator
19 and one -- one offense -- out of the ones that we talked
20 about, one offense does qualify. He pled guilty to that. It
21 was criminal sexual conduct in the second degree with his 11-
22 year-old daughter. He pled guilty to it. He did the time.

23 And you remember yesterday I asked Dr. Musick about
24 people who commit those kinds of incest crimes? I said, you
25 know, what's the rate of them reoffending and he said they

1 have got the lowest rate of reoffending of any sexual
2 offender. Remember, this isn't about punishing Mr. McBride
3 for what happened in the past. This is about what he will do
4 in the future and the State's own expert said, well, you know,
5 that type of crime has the lowest rate of re-offense in the
6 future.

7 Now Dr. Musick talked about a whole list of other
8 arrests. That's true there were six of them, but you know
9 what he said about four of those arrests? He said they were
10 no billed. Now what's that mean? Does that mean that anybody
11 ever proved that Mr. McBride did any of those? No. Does it
12 mean that he even got a chance to go to trial and get found
13 not guilty of them? No. Does it mean that the grand jury
14 even thought there was enough probable cause for an
15 indictment? No. They were no billed, four of them. What it
16 means is somebody accused him of doing it.

17 Now Dr. Musick didn't say Mr. McBride did those things.
18 He said that he looked over his records as part of the process
19 where he makes his diagnosis and that's what the second thing
20 that they got to do, right? They've got to diagnose him with
21 a mental abnormality or a personality disorder that makes it
22 likely that he will commit an act of sexual violence if he's
23 not confined. So what -- what did they diagnose him with?
24 Well, I'll tell you what they didn't diagnose. They didn't
25 diagnose paraphilia.

1 Now remember I asked Dr. Musick about paraphilia and he
2 said that's like an umbrella term that includes a whole lot of
3 deviant, perverted, sexual behavior. Two of those things
4 that's included in paraphilia is pedophilia, that's where
5 people like to have sex with prepubescent children, and the
6 other thing that's included in there is sexual sadism. That's
7 where people get sexually excited by hurting other people.
8 But he said Mr. McBride doesn't have either one of those. He
9 did not diagnose him with that.

10 Well, what did he diagnose him with? He diagnosed him
11 with something called antisocial personality disorder and,
12 well, that's a personality disorder all right, but what kind
13 is it? Is it the kind that makes it likely that he'll engage
14 in an act of sexual violence if he's not confined, because
15 that's what they've got to prove.

16 So I asked Dr. Musick, I said, "Can you list the factors
17 that, you know, show somebody's got that antisocial
18 personality disorder?" He said, "Well, they're likely to
19 break the law, they're likely to be physically aggressive,
20 they're likely to lie, likely to be impulsive, likely to
21 disregard their own safety and that of others." So I said,
22 "Well, wouldn't most people in prison fit that definition?"
23 and he said, "Well, yeah." But the State's not trying to lock
24 them up. In fact, Dr. Musick said that five percent of all
25 men are like that.

1 So Dr. Musick said it doesn't mean that Mr. McBride can't
2 control himself. He said that antisocial personality disorder
3 isn't even something that we normally commit people for and --
4 and what did Dr. Musick say when I asked him if he could say
5 for sure that Mr. McBride would commit an act of sexual
6 violence if he's not confined? He said, no, he couldn't say
7 that. So that's what I'm asking y'all to say when you go into
8 that jury room. I'm asking y'all to check "no" on the verdict
9 form. Thank you very much.

10 THE COURT: Any reply?

11 MR. BOGLE: Nothing in reply, Your Honor, thank you.

12 THE COURT: All right, Mr. Foreman, ladies and gentlemen
13 of the jury, it is now my duty as the trial judge under the
14 Constitution of the State to charge and instruct you on the
15 law applicable to this case. It is your duty as jurors to
16 accept and apply the law as I will now state it to you.

17 The State has brought this case under the Sexually
18 Violent Predator law of South Carolina. The State seeks the
19 civil commitment of the respondent for long term control, care
20 and treatment in a secure facility. Please understand when I
21 say respondent, I'm referring to Mr. Jimmy Mac McBride. This
22 is not, ladies and gentlemen, a criminal proceeding seeking
23 incarceration, but rather it's a proceeding seeking civil
24 commitment.

25 The State of South Carolina alleges that the respondent,

1 Jimmy Mac McBride, is a sexually violent predator under the
2 law. Mr. McBride denies that he is a sexually violent
3 predator and the burden of proof is therefore on the State to
4 prove by evidence sufficient to satisfy each of you beyond a
5 reasonable doubt that Mr. McBride is a sexually violent
6 predator. If the State is unable to meet that burden of proof
7 as to one or more of the elements of this claim, Mr. McBride
8 is entitled to a finding that he is not a sexually violent
9 predator.

10 Ladies and gentlemen, I want to make sure that you
11 understand that Mr. McBride is not accused of committing a
12 crime in this proceeding. As you heard from the testimony, he
13 did have previous charges for which he was sentenced by the
14 Court. Mr. McBride has now completed his sentence for those
15 charges and the State is now alleging that Mr. McBride is a
16 sexually violent predator.

17 The State has the burden of proof in this case and must
18 prove its case beyond a reasonable doubt. If you find that
19 the State has not met this burden, Mr. McBride will be
20 released. If you find that the State has met its burden of
21 proof and find that Mr. McBride is a sexually violent
22 predator, he will not be released, but he will be committed to
23 a secure treatment facility in Columbia operated by the South
24 Carolina Department of Mental Health. Under South Carolina
25 law, Mr. McBride will have the right to petition the Court

1 annually for a review of his case to determine if he is safe
2 to be at large and unlikely to commit acts of sexual violence.

3 Now during this trial, you and I have had separate duties
4 to perform. As the trial judge, it was my responsibility to
5 preside over this trial and I also have the duty to rule upon
6 the admissibility of the evidence offered during the process
7 of this trial. In that regard, you are to consider only the
8 competent evidence before you and you are to disregard from
9 your mind any testimony ordered stricken from the record of
10 this case during the process or progress of this trial, if
11 there was any. You are consider only the testimony which has
12 been presented from this witness stand together with any
13 exhibits admitted into the record of this case and any
14 stipulations of counsel made into the record, if there were
15 any.

16 Furthermore, I have the additional duty to charge you on
17 the applicable law of this case and in that regard I am the
18 sole judge of the law of this case. It is your duty to accept
19 and apply the law as I now state it to you. If you have any
20 preconceived ideas as to what the law is or what the law ought
21 to be and it does not agree with what I tell you the law is,
22 you are obligated under your oath to abandon these
23 preconceptions because you are sworn to accept the law
24 precisely as I now state it to you.

25 In this trial, you are the sole and exclusive judge of

1 the facts and I am the judge of the law. Do not infer that I
2 have any opinion about the facts in this case from anything
3 that I have said during the course of this trial in ruling
4 upon the admissibility of evidence or otherwise or from
5 anything that I now say during the course of this charge to
6 you. In this regard, the law simply does not permit me to
7 have an opinion about the facts. As jurors, it is your duty
8 alone to determine the effect, value, weight and truth of the
9 evidence presented during the course of this trial.

10 Now, ladies and gentlemen, in most civil cases tried in
11 the Court of Common Pleas, the burden of proof of proving a
12 claim is by the preponderance or greater weight of the
13 evidence. However, in this type of case and in this
14 particular statute, the State's burden is greater than that.
15 Here it must be beyond a reasonable doubt.

16 As I already stated to you, the State has the burden of
17 proof under the law of this state. According to the Sexually
18 Violent Predator statute, the State must prove its case to the
19 standard of proof beyond a reasonable doubt. If the State
20 fails to meet this high burden, then you must find that Mr.
21 McBride is not a sexually violent predator.

22 Now what is a reasonable doubt in the law? A reasonable
23 doubt is the kind of doubt that would cause a reasonable
24 person to hesitate to act. Proof beyond a reasonable doubt is
25 proof that leaves you firmly convinced that Mr. McBride is a

1 sexually violent predator.

2 Ladies and gentlemen, there are very few things in this
3 world that we know with absolute certainty and in this type of
4 case the law does not require proof that overcomes every
5 possible doubt. If based on your consideration of the
6 evidence you are firmly convinced that Mr. McBride is a
7 sexually violent predator, then you must return a verdict for
8 the State. If on the other hand you think there is a real
9 possibility that he is not a sexually violent predator, you
10 must give him the benefit of the doubt and return a verdict
11 for Mr. McBride.

12 Reasonable doubt may arise from evidence that is in the
13 case or from the lack of evidence in this case. It is up to
14 you, the jury, to determine whether or not a reasonable doubt
15 exists in this case.

16 Now there are two types of evidence which are generally
17 presented during a trial, direct evidence and circumstantial
18 evidence. Direct evidence is the testimony of a person who
19 claims to have actual knowledge of a fact, such as an
20 eyewitness. It is evidence which immediately establishes the
21 main fact to be proved.

22 Circumstantial evidence is proof of a chain of facts and
23 circumstances indicating the existence of a fact. It is
24 evidence which immediately establishes collateral facts from
25 which the main fact may be inferred. Circumstantial evidence

1 is based on inference and not on personal knowledge or
2 observation. The law makes absolutely no distinction between
3 the weight or value to be given to either direct or
4 circumstantial evidence, nor is a greater degree of certainty
5 required of circumstantial evidence than of direct evidence.

6 Now in determining what the facts in this case are, you
7 must judge the credibility, which simply means the
8 believability of the witnesses and the value and weight to be
9 given to their testimony. You alone must decide the force,
10 effect and truth of the testimony. In making this decision,
11 there are many things you may and should consider, such as the
12 appearance and manner of the witness on the witness stand, a
13 characteristic often referred to as the demeanor of the
14 witness.

15 Was the witness forthright or hesitant? Was the witness'
16 testimony consistent or did it contain discrepancies? What
17 was the ability of the witness to know the facts about which
18 he or she testified? Did the witness have a cause or reason
19 to be biased and prejudiced in favor of the testimony he or
20 she gave? Was the testimony of the witness corroborated or
21 made stronger by other testimony in evidence or was it made
22 weaker or impeached by such test -- such other testimony in
23 evidence?

24 As jurors, please understand you have the right to
25 believe a small portion of a witness' testimony and discard

1 the larger portion or vice versa. You may believe all of a
2 witness' testimony or none. You may believe the testimony of
3 a single witness against that of many witnesses or the other
4 way around.

5 In exercising your mental processes in attempting to
6 decide the truth, the law simply requires that you exercise
7 your good judgment and your common sense, your sense of logic
8 and reason and your experiences in life. You then apply these
9 attributes to the evidence and apply the law as I am now going
10 to state it to you and thus arrive at a verdict.

11 Now during the course of this trial, you heard the
12 testimony of an expert witness. The Rules of Evidence
13 ordinarily do not permit witnesses to testify to opinions or
14 conclusions. However, an exception to this rule exists for
15 witnesses we call expert witnesses. A witness who has special
16 knowledge, skill, experience, training, or education in a
17 particular field may state an opinion as to relevant and
18 material matters in which the witness claims to be an expert.

19 In determining the weight to be given to such an opinion,
20 you should likewise consider the qualification and credibility
21 of the expert and the reasons given for the opinion. You are
22 not bound by such an opinion. Rather, you should give it the
23 weight, if any, which you think it deserves. The value and
24 effect of expert testimony is a matter to be solely estimated
25 by you, the jury. No opinion of an expert can be accepted in

1 and of itself as truthful or reliable, but must be weighed by
2 you and convince your judgment beyond a reasonable doubt and
3 with the same force and effect as any other fact proved in
4 this case.

5 Before you can rely upon it, you must consider expert
6 testimony in the same manner as you do any other testimony and
7 give to it such weight as you believe it to be entitled when
8 considered with all other evidence in this case. Such
9 testimony is given for the purpose of helping you and not for
10 the purpose of controlling your judgment.

11 Now the elements which the State must prove beyond a
12 reasonable doubt in this case are, one, that Mr. McBride has
13 been convicted of a sexually violent offense. I charge you,
14 ladies and gentlemen, that criminal sexual conduct with a
15 minor in the second degree is a sexually violent offense. And
16 the State must prove beyond a reasonable doubt that Mr.
17 McBride suffers from a mental abnormality or personality
18 disorder that makes him likely to engage in acts of sexual
19 violence if not confined in a secure facility for long term
20 control, care and treatment.

21 Inherent in these two elements is that the State must
22 prove the requirement that Mr. McBride's mental abnormality or
23 personality disorder causes him serious difficulty in
24 controlling his behavior. In other words, the State must
25 prove beyond a reasonable doubt that the individual it seeks

1 to commit suffers from a mental illness which he cannot
2 sufficiently control without the structure and care provided
3 by a mental health facility, rendering him otherwise likely to
4 commit a dangerous act. In order for you to better understand
5 the elements of the State's cause of action, I am going to
6 define for you some of the terms that I have just used.

7 "Mental abnormality" means a mental condition affecting a
8 person's emotional or volitional capacity that predisposes the
9 person to commit sexually violent offenses. This mental
10 abnormality or personality disorder must cause Mr. McBride
11 serious difficulty in controlling his behavior.

12 "Likely to engage in acts of sexual violence" means the
13 person's propensity -- the person's propensity to commit acts
14 of sexual violence is of such a degree as to pose a menace to
15 the health and safety of others, so that he is dangerous to
16 others.

17 Excuse me. Again, I remind you that the burden of proof
18 is on the State to prove to your satisfaction beyond a
19 reasonable doubt that Mr. McBride has been convicted of a
20 sexually violent offense, as I have instructed you, and also
21 suffers from a mental abnormality or personality disorder that
22 makes him likely to engage in acts of sexual violence if not
23 confined in a secure facility for long term control, care and
24 treatment.

25 If the State carries its burden of proof and convinces

1 you beyond a reasonable doubt as to each of the two elements
2 of its cause of action, it is entitled to a finding that Mr.
3 McBride is a sexually violent predator. If the State does not
4 meet that burden of proof as to one or both of these elements,
5 Mr. McBride is entitled to a finding that he is not a sexually
6 violent predator.

7 Now, ladies and gentlemen, I am now drawing near the end
8 of my charge and I want you to clearly understand that you are
9 not partisans or advocates for the State of South Carolina or
10 the respondent, Mr. McBride. You do not serve as jurors to
11 reward your friends or punish your enemies. In this regard,
12 you have been selected by both the State and this respondent
13 to be fair and impartial jurors.

14 It is your duty by your joint deliberations to determine
15 the truth in this case, giving to Mr. McBride the benefit of
16 every reasonable doubt on each and every issue and then to the
17 facts which you determine to be true, you should take and
18 apply the law which has been given to you by this Court and
19 thus arrive at a verdict which speaks the truth in this case.

20 In fact, the word verdict, which has a Latin derivative,
21 means a true saying. Thus when you have accomplished these
22 responsibilities, you will have satisfied your oath as jurors
23 and you will have discharged your duty to this Court.

24 There are two possible verdicts which you may find in
25 this case. One, that Mr. McBride is a sexually violent

1 predator or two, that Mr. McBride is not a sexually violent
2 predator. There is no significance whatsoever in the order in
3 which I state these possible verdicts. It is simply that one
4 must be stated first.

5 All twelve of you must agree on the verdict. Your
6 verdict must be unanimous. Your verdict cannot be based on
7 sympathy, passion, prejudice, emotion or any other
8 consideration not in evidence in this case.

9 Now, Mr. Foreman, when the jury agrees on the verdict,
10 you will sign your name as foreperson on this verdict form
11 underneath the jury's verdict and date the verdict form. Then
12 please knock on the door and inform the bailiff that you all
13 have reached a verdict. Shortly thereafter or as soon as
14 practicable, I will get you all back in the courtroom and
15 conclude the case.

16 Now I now ask, ladies and gentlemen, that you retire to
17 the jury room, but do not begin your deliberations until
18 you're told to do so. The law requires that I now consult
19 with the attorneys to make sure that I have not left anything
20 out of these instructions or if there are any matters that
21 must be discussed before you begin your deliberations.

22 After I have checked with the attorneys, the bailiff will
23 bring in a copy of these instructions, the verdict form and
24 the items of evidence and instruct you to begin your
25 deliberations. Also, should you have any questions during

1 your deliberations, you must put them in writing and send them
2 to me by the bailiff. The court bailiff will be placed
3 outside the door during your deliberations for purposes such
4 as that.

5 Once you have reached a verdict, as well, let the bailiff
6 know and then they will let me know and we'll get you back in
7 here as promptly as possible. Thank you, ladies and
8 gentlemen. You now may retire to the jury room, but do not
9 begin your deliberations until you are instructed to do so.

10 Let me ask this before all of you go in there. Hold on,
11 come back out just a second, please. Mr. Paige, everybody
12 feel okay?

13 (Whereupon, all jurors indicate they feel okay.)

14 MR. PAIGE: Yes.

15 THE COURT: Okay, I just wanted to make -- make sure I
16 asked that question before I sent you in there. Is it
17 comfortable in that room? Okay, please retire to the jury
18 room, but don't begin your deliberations.

19 (Whereupon, the jury leaves the courtroom at 10:12 a.m.)

20 THE COURT: If the lawyers will come forward, please.
21 Just look at the exhibits. All right, are there any
22 exceptions, objections, additions to the charge by the State?

23 MR. BOGLE: No, Your Honor.

24 THE COURT: By the defense?

25 MS. PEACE: No, Your Honor.

1 THE COURT: All right, okay.

2 (Whereupon, counsel confirms the evidence.)

3 THE COURT: All right, here's my charge and here's the
4 verdict form. We looked at this yesterday. All right, if
5 y'all will bring Ms. Angela Moody back out here first, please
6 and then give that information to the jury and tell them to
7 begin their deliberations and get Ms. Moody out of there
8 first, please. Have they got something to write with back
9 there?

10 THE CLERK: I've got something.

11 THE COURT: All right.

12 (Whereupon, there is a brief pause in the proceedings
13 before the alternate is brought back into the courtroom.
14 The jury begins deliberations at 10:14 a.m.)

15 THE COURT: Ms. Moody?

16 MS. MOODY: Yes, sir?

17 THE COURT: I want to thank you for your service.

18 (Whereupon, the alternate leaves the courtroom at 10:15
19 a.m.)

20 THE COURT: All right, we'll stand at ease.

21 (Whereupon, there is a break in the proceedings until
22 11:25 a.m.)

23 THE COURT: All right, it's my understanding that the
24 jury has a verdict in this case. I'm going to remind --
25 excuse me, everybody -- Can you hand me some of that water,

1 please?

2 THE CLERK: Okay.

3 THE COURT: I'm going to remind everybody to keep your
4 emotions in check regardless of what the verdict is. Failure
5 to do so could result in you being held in contempt of court
6 and sentenced to a term of incarceration. Anything from the
7 State before I bring the jury in, Mr. Bogle?

8 MR. BOGLE: No, Your Honor.

9 THE COURT: Ms. Peace?

10 MS. PEACE: No, Your Honor.

11 THE COURT: All right, sir, if you'd bring us the jury.
12 Thank you.

13 (Whereupon, the jury enters the courtroom at 11:26 a.m.)

14 VERDICT OF THE JURY

15 THE COURT: Madam Clerk?

16 THE CLERK: Ladies and gentlemen of the jury, have you
17 reached a verdict?

18 FOREPERSON: Yes.

19 THE CLERK: Can I have it, please? Thank you.

20 (Whereupon, the verdict form is given to the Court to
21 review.)

22 THE COURT: All right, you may publish the verdict.

23 THE CLERK: Thank you, sir. The State of South Carolina,
24 County of Marion, in the Court of Common Pleas, Case Number
25 2011-CP-33-115, in the Matter -- Matter of the Care and

1 Treatment of Jimmy Mac McBride, Verdict Form. Has the State
2 of South Carolina proven beyond a reasonable doubt that the
3 respondent, Jimmy Mac McBride, is a sexually violent predator
4 under South Carolina Sexually Violent Predator Act? We, the
5 jury, unanimously answer the question as follows: Yes, Jimmy
6 McBride is a sexually violent predator. Dated 3/20/2012,
7 signed Cornell Paige, Foreperson. Is this your verdict, say
8 you one, say you all?

9 (Whereupon, all jurors respond in the affirmative.)

10 THE CLERK: Thank you.

11 THE COURT: All right, ladies and gentlemen, I want to
12 personally thank you for your service this week and I hope
13 that jury service was a good experience for you and I hope you
14 realize that this isn't TV. This isn't TV. Jury service is
15 not an easy responsibility. I appreciate your attentiveness
16 throughout this -- these last two days. I know that the
17 lawyers do as well, but I personally want to thank you for
18 your service, tell you that you are free to go and you're free
19 for the balance of the week, okay?

20 You don't have to come back. This is the only case that
21 ended up having to be tried this week. The other cases that
22 were on the roster this week were either settled or continued
23 for various reasons until the next term of court and you all
24 have fulfilled your responsibility as jurors. We can't touch
25 you up here at least for the next three years.

1 Now I can't help you if they call you to Federal Court,
2 City Court or Magistrates Court, but if they call you back up
3 here, I can certainly -- me or the presiding judge, if you'll
4 let him know that you served, we will get you excused if you
5 so desire to be excused. You're not forbidden from serving if
6 you get called within the next three years, but I want to
7 thank you for your service. If any of you need work excuses,
8 that'll be ---

9 THE CLERK: If you'll just go across the street to my
10 office, we'll be glad to furnish them for you. Your check, as
11 small as it's going to be, will be in the mail though.

12 THE COURT: Well, we can't pay you for what your service
13 means to this community, to the State, to the country. If we
14 did, we couldn't do it. We couldn't do it. Your service as
15 jurors is invaluable, but I want to thank you for your
16 service. I hope you all have a good rest of the day. It is
17 raining outside now. Hopefully, we'll get rid of some of that
18 pollen. At least, it was raining a minute ago. I don't know
19 about you all, but that pollen is about to kill me. So you
20 all have a good day. Thank you again for your service.

21 (Whereupon, the jury leaves the courtroom at 11:30 a.m.)

22 MR. BOGLE: May I approach, Your Honor?

23 THE COURT: Yes, sir.

24 MR. BOGLE: I have the order.

25 THE CLERK: Thank you, sir.

1 THE COURT: Madam Clerk? Thank you, sir.

2 (Whereupon, there is a brief pause in the proceedings.)

3 THE COURT: The first sentence of it is this case was
4 tried in the County of Lexington.

5 MR. BOGLE: Oh, we've got a form. Do you want me to e-
6 mail you a corrected version?

7 THE COURT: No, I'm going to change it. I'm going to
8 initial it.

9 MR. BOGLE: All right. It's a form I used last week, so
10 sometimes I miss them.

11 MS. PEACE: I also believe that the case number should be
12 2011.

13 THE COURT: All right.

14 MR. BOGLE: It is. I missed that, too.

15 THE COURT: All right. I've signed the order that was
16 handed up here, making those two changes from Lexington County
17 to Marion County and initialed that myself, as well as the
18 case caption number, case number 2011-CP-33-115. Madam Clerk?

19 Another -- At the bottom it says Judge of the Eleventh
20 Judicial Circuit. It is the Twelfth Judicial Circuit.

21 MR. BOGLE: Do you want me to get you a corrected one by
22 e-mail?

23 THE COURT: I signed it.

24 MR. BOGLE: Thank you, sir.

25 THE COURT: Anything from the -- Anything further from

1 the State at this time?

2 MR. BOGLE: No, Your Honor.

3 THE COURT: Anything from the defense counsel?

4 MS. PEACE: Yes, Your Honor. I have a few post-trial
5 motions.

6 THE COURT: Okay, I'll be happy to hear from you.

7 MS. PEACE: I'd like to, of course, renew all my pre-
8 trial motions, motions made during the trial. I'd also like
9 to move at this time for a new trial. In the alternative, for
10 judgment notwithstanding the verdict or in the alternative,
11 ask Your Honor to act as the thirteenth juror inasmuch as the
12 verdict did not conform to the evidence.

13 THE COURT: Mr. Bogle, anything in response?

14 MR. BOGLE: Just that we believe the evidence was
15 sufficient to establish beyond a reasonable doubt the two
16 elements of the State's cause of action. We are not aware of
17 any reasons for a new trial. The jury got the case, heard all
18 the evidence. I don't think anything -- There was only one
19 objection during the entire trial as to a question I asked
20 that was sustained by Your Honor.

21 So I think there's a -- It was a clean trial. The
22 evidence supports the verdict and we respectfully the motion
23 not be -- we submit that the motions should be denied.

24 THE COURT: All right. With regards to defendant's
25 motion for a new trial, there's no evidence that would lead

1 the Court to believe that the jury's verdict in this case is
2 the result of passion, caprice, prejudice, partiality or
3 corruption. I would just want to note for the record the jury
4 received this case about 10:14 and returned a verdict at about
5 11:25.

6 I do not believe the jury went back there and didn't
7 think about it. I think they certainly went back there and
8 discussed it fully and it was the result of them going back
9 into that jury room and deliberating and I do not believe that
10 it would warrant a new trial because I do not see or believe
11 that their verdict was the result of any passion, prejudice,
12 corruption, etcetera. Therefore, I would respectfully deny
13 your motion for a new trial.

14 With regards to the request that the judge enter as a
15 thirteenth juror, so to speak, I'm going to respectfully deny
16 that motion as well. I believe that the evidence certainly
17 justifies the verdict in this case. Dr. Musick came in and
18 testified about his evaluation of this individual, that his
19 findings were that he satisfied the criteria under the South
20 Carolina state law as a sexually violent predator based upon
21 his evaluation.

22 Therefore, I believe that the verdict in this case was
23 the result of them going in the jury room and considering the
24 evidence. Certainly, the Court explained to the jury that
25 they can believe all of a witness' testimony, none of it or

1 part of it. In this particular case, evidently they believed
2 what Dr. Musick had to say and therefore, I respectfully deny
3 your motion with regards to the thirteenth juror doctrine.

4 With regards to the JNOV, certainly I believe that --
5 Well, JNOV is granted when there's only one reasonable
6 inference, one reasonable inference, and I believe there were
7 more than one inference that could be drawn here. The jury
8 heard the testimony that was presented by the State and
9 certainly the jury could have reached -- Based upon the
10 testimony that was presented, they could have reached the
11 verdict which they reached. JNOV is used in those situations
12 where no reasonable jury could have reached a verdict. I do
13 not believe the verdict they reached in this particular matter
14 was unreasonable based upon the evidence and testimony that
15 was presented to them. So I'm respectfully denying your
16 motions. All right?

17 MR. BOGLE: Thank you, Your Honor.

18 MS. PEACE: Thank you, Your Honor.

19 (Whereupon, the trial ends at 11:38 a.m.)

20 --- END REQUESTED TRANSCRIPT ---
21
22
23
24
25

1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF FLORENCE)
4

5 I, the undersigned, Krystal J. Smith, Official Court
6 Reporter for the Twelfth Judicial Circuit of the State of
7 South Carolina, do hereby certify that the foregoing is a
8 true, accurate, and complete Transcript of Record of all the
9 proceedings had and evidence introduced in the hearing of the
10 above captioned case, relative to appeal, in the Court of
11 Common Pleas for Marion County, South Carolina, on the 19th
12 and 20th days of March, 2012.

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

15
16 Krystal J. Smith

17 Court Reporter

18
19 Florence, South Carolina

20 May 10, 2012
21
22
23
24
25

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Marion
STATE VS Jimmy McBride
AKA:
Race: B Sex: M Age: 36
DOB: SS#:
Address:
City, State, Zip
DL# SID#

INDICTMENT/CASE#: 30
A/W#: 05 -GS- 33
Date of Offense: 7-26-03
S.C. Code §: 16-3-675(2)
CDR Code #: 0131916
☐ CASE RESTORED
SENTENCE
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS
TO: CSC WITH A MIND 2d
in violation of 16-3-675(2) of the S.C. Code of Laws, bearing CDR Code # 0131916
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: [Signature] Jimmy McBride [Signature]
Solicitor Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed 2 years
and/or to pay a fine of \$ provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable; the balance is suspended with probation for
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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
☐ set by SCDPPPS

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 \$
§ 35.13 (Public Def/Prob) \$500 \$
§73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
§33.7, 1B TP (Drug Court Surcharge) \$100 \$
§50-21-114(BUI Breath Test Fee) \$50 \$
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$ 3.75
TOTAL \$ 128.75

PTUP 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:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Sherry B. Rhodes
Clerk of Court/ Deputy Clerk
Court Reporter: Lumela McCull

PRESIDING JUDGE [Signature]
Judge Code: 0131916
Sentence Date: 05-25-03
ORIGINAL FILED IN THIS OFFICE

BOOK PAGE
Sherry B. Rhodes
Clerk of Court
CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

SCCA/217 (7/2003)

ARREST WARRANT

H-484830

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
MARION COUNTY

 THE STATE 191138
against

JIMMY MCBRIDE

Address: SC 29574

Phone: 843 423 8216

Sex: M Race: B Height: 5'11" Weight: 196

DL State: SC DL:

DOB:

Prosecuting Agency: MARION COUNTY SHERIFF DEPT

Prosecuting Officer: DET. BRIAN WALLACE

Offense: SEX/CRIMINAL SEXUAL CONDUCT

CT MINOR UNDER

Code/Ordinance Sec. 16-03-0655(2)

 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 law.

Date: 7/26/03 Signature of Judge (L.S.)

 A copy of this arrest warrant was delivered to
defendant JIMMY MCBRIDE

 Signature of Constable/Law Enforcement Officer
 7/19/04 1421hrs

RETURN WARRANT TO:

LOGGED 8-6 2004

BOOK 15 PAGE NO 717

SHERIFF OFFICE

MARION COUNTY, S.C.

SHERIFF W. L. BILLY PAGE

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
MARION COUNTY

AFFIDAVIT

DET. BRIAN WALLACE

 Personally appeared before me the affiant DET. BRIAN WALLACE who
being duly sworn deposes and says that 9/26/03 JIMMY MCBRIDE
did within this county and state on 9/26/03 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of)
in the following particulars: SEX/CRIMINAL SEXUAL CONDUCT MINOR UNDER
DESCRIPTION OF OFFENSE:

 I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and listed in probable cause is passed at the following address:
ON JULY 26, 2003 AT 2639 CAROLINA WREN ROAD, MULLINS, SC,
IN MARION COUNTY, APPROXIMATELY 0100 HRS, ONE JIMMY MCBRIDE DID
COMMIT A SEXUAL BATTERY UPON HIS ELEVEN YEAR OLD DAUGHTER.
THEREFORE JIMMY MCBRIDE IS CHARGED WITH CRIMINAL SEXUAL
CONDUCT ON A MINOR, A VIOLATION OF SC CODE OF LAWS 16-3-655(2).

 Sworn to and subscribed before me
on 8/04/04

 Signature of Issuing Judge (L.S.)
 Brian Wallace

 Signature of Affiant 8/15 EAST HWY 76, SUITE C
Affiant's Address MULLINS SC 29573
Affiant's Telephone 843 423-8216

 STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
MARION COUNTY

ARREST WARRANT

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

 If 7/26/03 from the above affidavit that JIMMY MCBRIDE reasonable grounds to believe
on 7/26/03 did violate the criminal laws of the State of South Carolina (or ordinance of)
☐ County/ ☐ Municipality of SEX/CRIMINAL SEXUAL CONDUCT MINOR UNDER

DESCRIPTION OF OFFENSE:

 Now, therefore, 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.

 Signature of Issuing Judge (L.S.)
 Brian Wallace

 Judge Code: 893
 Judge's Telephone 843 423-8393

 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

INDICTMENT FOR

STATE OF SOUTH CAROLINA)
COUNTY OF MARION)
CRIMINAL SEXUAL CONDUCT WITH A MINOR,
SECOND DEGREE

At a Court of General Sessions, convened on FEBRUARY 24, 2005, the Grand Jurors of MARION County present upon their oath:

COUNT ONE - CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE

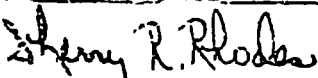
That JIMMY MCBRIDE did in MARION County on or about July 26, 2003, violate Section 16-03-0655(2) of the Code of Laws of South Carolina (1976), as amended, in that he did wilfully and unlawfully commit, or attempt to commit, a sexual battery in and upon one Minor his daughter, a child who is fourteen years of age or less but who is at least eleven years of age, by having sexual intercourse with her.

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


SOLICITOR

VERIFIED COPY OF THE
ORIGINAL FILED IN THIS OFFICE

BOOK _____ PAGE _____


CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

S+ 2

IN THE CIRCUIT COURT,
FOURTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA,
IN AND FOR JACKSON COUNTY

STATE OF FLORIDA

CASE #: 04-0126CF

SA#: 322004F01211

VS

INFORMATION CHARGING:**LEWD OR LASCIVIOUS BATTERY****Jimmy Mac McBride**

(B/M; DOB: () 3

SS# 040 22 5210

F ()

Madison County, FL)

Larry Basford, Assistant State Attorney for the Fourteenth Judicial Circuit of Florida, duly appointed and designated to sign informations on behalf of Jim Appleman, State Attorney, prosecuting for said State of Florida, in the name and by the authority of the State of Florida, in the County of JACKSON, under oath informs the Court that:

Jimmy Mac McBride, on or about the 29th day of February, 2004, in the County of JACKSON and State of Florida, did unlawfully engage in sexual activity with P.D.G., a person 12 years of age but less than 16 years of age, in violation of Section 800.04(4), Florida Statute. (2 DEG FEL)

Larry Basford, as Assistant State Attorney for the Fourteenth Judicial Circuit of Florida, under oath, says that the allegations set forth in this INFORMATION are based on facts that have been sworn to as true, under oath by material witness (es), and which, if true, would constitute the offense therein charged, and this INFORMATION is filed in good faith.

The foregoing instrument was acknowledged before me this 19th day of March, 2004, by Larry Basford, who is personally known to me and did take an oath.

Sandra K. Fuqua
Sandra K. Fuqua, Notary Public



Sandra K. Fuqua
MY COMMISSION # 00058148 EXPIRES
September 18, 2005
BONDED THRU TROY FARM INSURANCE, INC.

Larry Basford
Larry Basford
Assistant State Attorney
P O Box 956 / 4445 Lafayette Street
Marianna, FL 32447
(850) 482-9555
(800) 344-7532
FL Bar #: 361951

FILED
CLERK OF THE CIRCUIT COURT
JACKSON COUNTY, FLORIDA
MAR 9 PM 3 32
DALE RABON GUTHRIE



CERTIFIED A TRUE COPY.

2-18-12
DALE RABON GUTHRIE
CLERK CIRCUIT COURT
JACKSON COUNTY, FLORIDA

By: [Signature]
Deputy Clerk

Case number 04-126 CF

FILED
CLERK OF THE COURT
JAN 29 1967
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200600159105160002

State of Florida

v.

Jimmy McBride

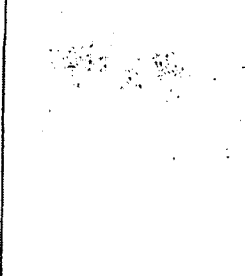
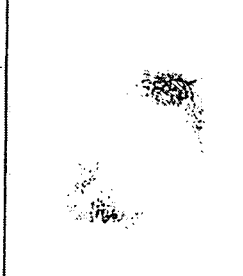
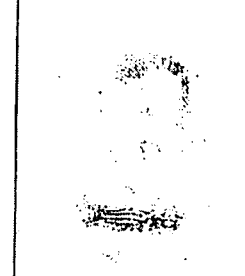
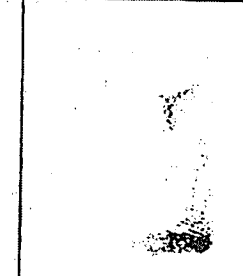
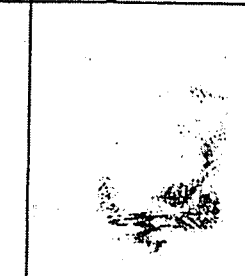
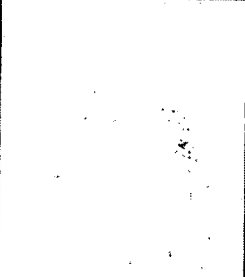
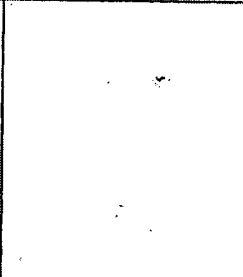
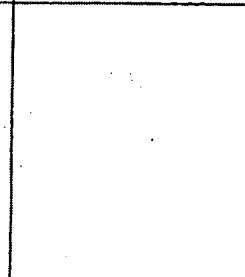
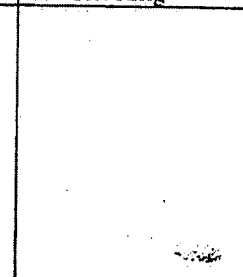
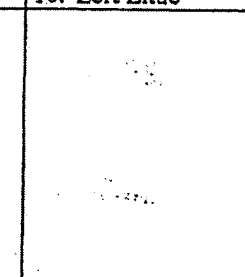
Defendant

O.R. 1065 PG. 0517

Case Number

04-126 CF

FINGERPRINTS OF DEFENDANT

1. Right Thumb	2. Right Index	3. Right Middle	4. Right Ring	5. Right Little
				
6. Left Thumb	7. Left Index	8. Left Middle	9. Left Ring	10. Left Little
				

Fingerprints taken by:

DARYL TYUS

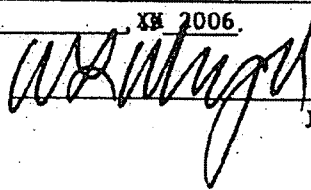
Name

SGT

Title

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the defendant, Jimmy McBride, and that they were placed thereon by the defendant in my presence in open court this date.

DONE AND ORDERED in open court in Marianna, Jackson County, Florida, this 24TH day of JANUARY, 2006.



Judge

D.R. 1065 PG. 0518

Defendant Jimmy Mac McBride Case Number 04-126 CF OBTS Number _____(As to Count I)

The defendant, being personally before this court, accompanied by the defendant's attorney of record Guy Green, and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown

(Check one if applicable.)

_____ and the Court having on _____ deferred imposition of sentence until this date
(date)

_____ and the Court having previously entered judgment in this case on _____ now sentences
the defendant (date)

_____ and the Court having placed the defendant on probation/community control and having subsequently revoked
the defendant's probation/community control.

It Is The Sentence Of The Court that:

_____ The defendant pay a fine of \$ _____, pursuant to section 775.083, Florida Statutes, plus \$ _____ as the 5% surcharge required by section 960.25, Florida Statutes.

XXX The defendant is hereby committed to the custody of the Department of Corrections.

_____ The defendant is hereby committed to the custody of the Sheriff of _____ County, Florida.

_____ The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

To Be Imprisoned (Check one; unmarked sections are inapplicable.):

_____ For a term of natural life.

XXX For a term of 5 Years

_____ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

If "split" sentence, complete the appropriate paragraph.

_____ Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.

_____ However, after serving a period of _____ imprisonment in _____, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

Inst No: 2006001592 Date: 01/25/2006 Time: 14:23
DALE RABON GUTHRIE, JACKSON County
By: _____ D.C. B: 1065 P: 518

of 3

CERTIFIED A TRUE COPY.

3-13-12
DALE RABON GUTHRIE
CLERK CIRCUIT COURT
JACKSON COUNTY, FLORIDA

By: [Signature]
Deputy Clerk

Defendant Jimmy Mac McBride Case Number 04-126 CF

(As To Count All)

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:

Firearm	_____	It is further ordered that the 3-year minimum imprisonment provisions of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count.
Drug Trafficking	_____	It is further ordered that the _____ mandatory minimum imprisonment provisions of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.
Controlled Substance Within 1,000 Feet of School	_____	It is further ordered that the 3-year minimum imprisonment provisions of section 893.13(1)(e)1, Florida Statutes, is hereby imposed for the sentence specified in this count.
Habitual Felony Offender	_____	The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.
Habitual Violent Felony Offender	_____	The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.
Law Enforcement Protection Act	_____	It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with section 775.0823, Florida Statutes.
Capital Offense	_____	It is further ordered that the defendant shall serve no less than 25 years in accordance with the provisions of section 775.082(1), Florida Statutes.
Short-Barreled Rifle, Shotgun, Machine Gun	_____	It is further ordered that the 5-year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count.
Continuing Criminal Enterprise	_____	It is further ordered that the 25-year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in this count.
<u>Other Provisions:</u>		
Retention of Jurisdiction	_____	The court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983).
Jail Credit	<u>XXX</u>	It is further ordered that the defendant shall be allowed a total of <u>65</u> days as credit for time incarcerated before imposition of this sentence.
Prison Credit	_____	It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing.

O.R. 1065 PG. 0520

Defendant Jimmy Mac McBrideCase Number 04-126 CFOther Provisions continued:

Consecutive/Concurrent _____ It is further ordered that the sentence imposed for this count shall run
 As To Other Counts (check one) _____ consecutive to _____ concurrent
 with the sentence set forth in count _____ of this case.

Consecutive/Concurrent XXX It is further ordered that the composite term of all sentences imposed for the counts
 As To Other Convictions specified in this order shall run
 (check one) _____ consecutive to XXX concurrent
 with the following
 (check one) _____
 _____ any active sentence being served.

XXX specified sentences: Concurrent with Sentence now being served in South
Carolina. Court has no objection to defendant serving Jackson county sentence in
South Carolina.

In the event the above sentence is to the Department of Corrections, the Sheriff of Jackson
 County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility
 designated by the department together with a copy of this judgment and sentence and any other documents specified by
 Florida Statute.

The defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal within
 30 days from this date with the clerk of this court and the defendant's right to the assistance of counsel in taking the appeal
 at the expense of the State on showing of indigency.

In imposing the above sentence, the court further recommends _____

DONE AND ORDERED in open court at Jackson County, Florida,

this 24th day of January, 20 06.

ASL Whizit
 Judge



South Carolina Department of Probation, Parole and Pardon Services



EVANS (0531)

Know all men by these presents:

COMMUNITY SUPERVISION PROGRAM CERTIFICATE

It having been made to appear to the satisfaction of the SOUTH CAROLINA DEPARTMENT OF PROBATION PAROLE AND PARDON SERVICES that the offender mentioned below who was convicted of the offense(s) indicated below on said date(s) and in said county(ies) meets the requirements for Community Supervision Program as provided for in §24-21-560 of the South Carolina Code of Laws 1976, as amended.

It is therefore ORDERED that the said prisoner enter the Community Supervision Program at the end of his or her active sentence under supervision subject to the specific conditions listed below until the expiration of this Community Supervision Program as indicated below.

This release shall not prevent the delivery of the prisoner to authorities of the Federal Government or any state otherwise entitled to his or her custody.

In witness whereof, this Certificate bearing the approval of the South Carolina Department of Probation, Parole and Pardon Services is issued on the date below.

By Order of:

South Carolina Department of Probation, Parole and Pardon Services

By:

Katherine G. Moore, Coordinator, Community Release and Programs

Offender/Prisoner's Name: MCBRIDE, JIMMY MAC
 Supervision Beginning Date: September 1, 2011
 State Identification # (SID): 00554150
 SC Dept. of Corrections # (SCDC): 00228926
 Supervision Ending Date: November 17, 2012

Offense(s)	COR	Indictment #(s)	Conviction Date(s)	County of Conviction(s)	Incarceration Termination Date	Restitution Ordered (\$)	Probation to Follow
Criminal sexual conduct with minor or Attempt - victim 11 to 14 yrs of age inclusive - Second deg. (SR unless	396	05GS3300030	5/25/2005	MARION	9/1/2011		No

CONDITIONS OF SUPERVISION

Additional Offenses or Notes Page 2

Violation of any of these conditions may result in the immediate revocation of supervision.

1. I shall report in person to the South Carolina Department of Probation, Parole and Pardon Services' office on the day of my release or not later than 8:30 AM on the next business day, and as instructed by the Department; and I shall make complete and truthful reports to the Agent.

Please report to the office in the County of: MARION

Phone: (843) 423-2666

2. I shall not change my residence or employment without the consent of my Agent. Further, I shall allow my Agent to visit me in my home, at my place of employment, or elsewhere at any time.
3. I shall not use controlled substances, except when properly prescribed by a licensed physician, nor consume alcoholic beverages to excess nor enter establishments whose primary business is the sale and drinking of alcoholic beverages. Further, I shall submit to a urinalysis, blood test or provide forensic evidence when instructed by Agents of the Department, and I agree that any of these test results may be used as evidence in any hearing.
4. I shall not possess or purchase any firearms, knives, or dangerous weapons, and I shall not associate with any person who has a criminal record, or any other person whom my Agent has instructed me to avoid.
5. I shall work diligently at a lawful occupation. Further, I shall notify my Agent if I become unemployed.
6. I shall not violate any Federal, State, or local laws and I shall contact my Agent if I am ever arrested or questioned by a law enforcement official for any reason whatsoever.
7. I shall pay a supervision fee as determined by the Department.
8. I shall not leave the State without permission from my Agent. Further, if I am ever arrested in another state for violating these conditions, I hereby irrevocably waive all extradition rights I may otherwise be entitled to and agree to return to South Carolina when directed by my Agent, the court, or by a warrant.
9. I shall obey all conditions of supervision set forth in this order including the payment of fines, restitution, or other payments, and the services of any period of incarceration. I will make all child support payments as ordered by the courts.
10. I shall follow the advice and instructions of my Agent and I agree to comply with any further conditions imposed by the Department or its Agents.
11. Unless I was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year, I shall be subject to search or seizure, without a search warrant, with or without cause, of my person, any vehicle I own or am driving, and any of my possessions by: (1) any probation agent employed by the Department; or (2) any other law enforcement officer.

ADDITIONAL CONDITIONS:

26 Complete Sex Predator Review.

04 Must have no contact with the Victim and/or Victim's family for duration of supervision.

07 Release to Florida detainer if applicable.

I hereby certify that the conditions listed above have been read and explained fully to me and in agreement thereto, I attach my signature.

Offender Signature

Address: 2616 Greenwood Ct, MULLINS, SC 29574, MARION, USA

8/30/11

Phone:

Date

I hereby certify that this Statement of Conditions has been read and explained to the offender and he/she has agreed to them.

Witness Signature

8/30/11

Date



South Carolina Department of Probation, Parole and Pardon Services
COMMUNITY SUPERVISION PROGRAM CERTIFICATE
 Page 2

Offender/Prisoner's Name: MCBRIDE, JIMMY MAC
 Supervision Beginning Date: September 1, 2011
 State Identification # (SID): 00554150
 SC Dept. of Corrections # (SCDC): 00228926
 Supervision Ending Date: November 17, 2012

Offense(s)	CDR	Indictment # (s)	Conviction Date(s)	County of Conviction(s)	Incarceration Termination Date	Restitution Ordered (\$)	Probation to Follow
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ADDITIONAL CONDITIONS:

23 Residence Plan Rejected.

27 GPS Monitoring Not Less than 6 Months: If I am unable to report on the day of release I understand that I will be confined to my home until I report to SCDPPPS at 8:30 AM the next business day.

31 Attend Sex Offender Counseling.

ADDITIONAL CONVICTIONS:

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) TWELFTH JUDICIAL CIRCUIT
 COUNTY OF MARION) CASE NO. 2010-CP-33-00115
) 2011
) DCB
 IN THE MATTER OF THE CARE)
 AND TREATMENT OF)
 JIMMY MAC MCBRIDE,) ORDER OF COMMITMENT
 RESPONDENT.)

FILED
 BOOK _____ PAGE _____
 2012 MAR 20 A 11:25
 MARION COUNTY SC
 SHERIFF R. RHODES
 CLERK OF COURT

The trial of this case was held in the County of ~~Lexington~~ ^{Marion} in the Court of Common Pleas the week of March 19, 2012. A jury of citizens from Marion County heard this case pursuant to a request for a jury trial filed by the State. Senior Assistant Attorney General James G. Bogle, Jr. represented the State. Sally Ward Peace, Esquire, represented the Respondent. The jury having heard the presentation of the evidence made the following findings of fact pursuant to S. C. Code Ann. Sections 44-48-90 and 44-48-100:

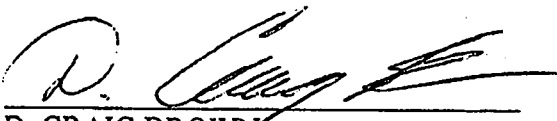
The State has proven beyond a reasonable doubt that Respondent, Jimmy Mac McBride, is a sexually violent predator as that term is defined in S. C. Code Ann. Section 44-48-30.

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

- (a) Respondent is committed to the Department of Mental Health for his long-term control, care and treatment;
- (b) Respondent is to be detained in the Marion County Detention Center and transported, as soon as possible, by the Sheriff of Marion County to the secure facility of the South Carolina 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 (or the Detention Center) coordinates with the Department of Mental Health;

AND IT IS SO ORDERED.

March 20, 2012
 Marion, South Carolina


 D. CRAIG BROWN
 Judge for the ~~Eleventh~~ Twelfth Judicial Circuit
 Court of Common Pleas
 DCB

1
WITNESSES
INSPECTOR KENNY DAVIS MCSO
Wallace

PROS:
D/O: 07-26-2003

ARREST WARRANT NO. 0008
H484830 (1)
MARION COUNTY SC
SHERIFF R. RHODES
CLERK OF COURT
2005 FEB 25 A 10:18
PAGE
FILED

ACTION OF GRAND JURY

True Bill

W. B. Jones
Foreman of Grand Jury
VERDICT

Foreman of Petit Jury Date:

DOCKET NO. 2005 - GS - 33 - 00030
The State of South Carolina,
County of MARION

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2005

THE STATE
vs.

JIMMY MCBRIDE

Indictment for
CRIMINAL SEXUAL CONDUCT WITH
A MINOR, SECOND DEGREE

INDICTMENT FOR

STATE OF SOUTH CAROLINA)
COUNTY OF MARION)

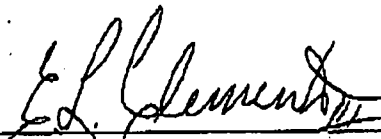
CRIMINAL SEXUAL CONDUCT WITH A MINOR,
SECOND DEGREE

At a Court of General Sessions, convened on FEBRUARY 24, 2005, the Grand Jurors of MARION
County present upon their oath:

COUNT ONE - CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE

That JIMMY MCBRIDE did in MARION County on or about July 26, 2003, violate Section 16-03-0655(2) of the Code of Laws of South Carolina (1976), as amended, in that he did wilfully and unlawfully commit, or attempt to commit, a sexual battery in and upon one Minor, his daughter, a child who is fourteen years of age or less but who is at least eleven years of age, by having sexual intercourse with her.

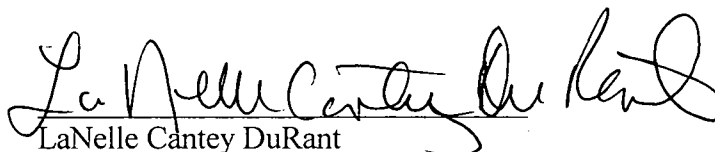
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

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."

May 20th, 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

RECEIVED

MAY 20 2013

SC COURT OF APPEALS

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Marion County

D. Craig Brown, Circuit Court Judge

RECEIVED

MAY 20 2013

SC Court of Appeals

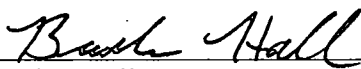
IN THE MATTER OF THE CARE AND TREATMENT
OF JIMMY MAC MCBRIDE,

APPELLANT

APPELLATE CASE NO. 2012-210127

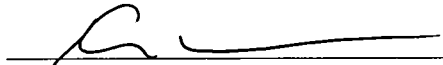
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of May, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 20th day of May, 2013.



(L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.