

STATE OF SOUTH CAROLINA

 ORIGINAL

In The Court of Appeals

APPEAL FROM YORK COUNTY

Thomas A. Russo, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF O'BRYAN B. WHITLOCK,

APPELLANT

APPELLATE CASE NO. 2012-212021

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)
COUNTY OF YORK) IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
11-CP-46-1081

In the Matter of the Care)
and Treatment of O'Bryan)
Broschaw Whitlock)

Transcript of Record

May 14, 15, 2012
York, South Carolina

B E F O R E:

The Honorable Thomas Russo

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

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Attorney for the Defendant

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SIXTEENTH JUDICIAL CIRCUIT

I N D E X

WITNESS	DIRECT	CROSS	RE-DIRECT	RE-CROSS
Dr. Leonard Mulbry				
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1 The Court - Ladies and gentlemen, I want to
2 welcome all of you for this term of Court. It is a dual
3 term of Court as I'm sure Judge Alford explained to you
4 this morning. We will be handling matters and needed your
5 assistance in matters that deal with both a criminal court
6 as well as common pleas Court of what is commonly referred
7 to as Civil Court. My name is Tommy Russo. I'm a Circuit
8 Court Judge out of Florence, South Carolina, and it's my
9 pleasure and my honor to be serving here in York County
10 this week, and ladies and gentlemen, this term or this
11 proceeding that you're up here for this week, at least for
12 the purposes of this case is a civil matter. As I told
13 you, we'll be doing both criminal and civil matters and it
14 may be when I tell you what this first case is about that
15 you may have some confusion as to that. The first case
16 that we're going to need your assistance on is a case that
17 is captioned as In the Matter of -- In the Matter and Care
18 and treatment of O'Bryan -- is it Broschaw ---

19 Mr. Whitlock - Yes, sir.

20 The Court - --- Okay -- Whitlock. Now, Mr.
21 Whitlock is here this week and he's having his time in
22 Court. This is a case where the State of South Carolina
23 has brought this case under a provision of our Code called
24 the Sexually Violent Predator Act, and the purpose of this
25 case or this trial here this week, the State is seeking to

5

1 commit Mr. Whitlock into a long-term care facility and so
2 this is not a criminal case because Mr. Whitlock is not
3 charged with a criminal offense. The State is simply
4 seeking a civil commitment to have Mr. Whitlock committed
5 to a long-care -- long-term care facility to receive
6 treatment and, of course, Mr. Whitlock's position is that
7 that's not -- that's not necessary, that he does not fall
8 under the guidelines of the State of South Carolina under
9 the Sexually Violent Predator Act. So I tell you that
10 just to try to relieve any confusion you may have and to
11 make it clear to you that in this case Mr. Whitlock is not
12 charged with a criminal offense. This is simply a civil
13 commitment action. Now, I haven't told you a whole lot,
14 but is there any member of the jury panel who knows
15 anything about this matter or about this case based on
16 what I have just shared with you? If so, please stand.

17 (No response)

18 The Court - All right, thank you. There are
19 none. Ladies and gentlemen, I am going to have the
20 attorneys introduce themselves to you. Please if you
21 would listen carefully while they do that. Mr. Bogle,
22 I'll start with you, sir.

23 Mr. Bogle - Thank you, Your Honor. My name is
24 Jim Bogle. I'm with the Attorney General's office out of
25 Columbia. I live in Columbia, South Carolina.

1 Mr. Brooks - My name is Charles Brooks. I'm an
2 attorney, live in Columbia, practices in Sumter. This is
3 my client, Mr. O'Bryan Whitlock.

4 The Court - All right. Now, Mr. Whitlock, if
5 you would just stand for a moment and face the members of
6 the jury so they can get a look at you, sir.

7 (Mr. Whitlock complies)

8 The Court - Thank you, very much. You may have
9 a seat. Ladies and gentlemen, I'm going to begin with Mr.
10 Bogle. Is there any member of the jury panel who is
11 related by blood, connected by marriage or who has any
12 close business or personal relationship with Mr. James
13 Bogle or who has been represented by him in the past? If
14 so, please stand.

15 (No response)

16 The Court - Thank you. There are none. Is
17 there any member of the jury panel who's related by blood,
18 connected by marriage or has any close business or
19 personal relationship with or who has been represented by
20 Mr. Charles Brooks in the past? If so, please stand.

21 (No response)

22 The Court - Thank you. There are none. Ladies
23 and gentlemen, you met Mr. Whitlock. Is there any member
24 of the jury panel who is related by blood, connected by
25 marriage or has any close business or personal

1 relationship with Mr. Whitlock? If so, please stand.

2 (No response)

3 The Court - All right, thank you. There are
4 none. Mr. Brooks, do I have a list of potential
5 witnesses.

6 Mr. Brooks - We've got Dr. Jeffrey Musick.

7 The Court - Musick?

8 Mr. Brooks - Yes.

9 The Court - All right. Ladies and gentlemen,
10 I'm going to call out a couple of names. The -- Let me
11 just write that down. These folks are possible or
12 potential witnesses that may testify during the course of
13 this trial. I'd just asked you -- Remember the question
14 I just asked you with regards to Mr. Whitlock, and that
15 is, related by blood, connected by marriage or have any
16 close business or personal relationship with these
17 witnesses. That's the question that I'll be asking as it
18 relates to these witnesses. If that question applies to
19 you, please stand. Possible or potential witnesses that
20 may testify during the course of this trial. There's a
21 Dr. Leonard W. Mulbry, Dr. Jeffrey Musick. Any members of
22 the jury panel related by blood or connected by marriage
23 or have any close business or personal relationship with
24 either one of those doctors?

25 (No response)

1 The Court - Thank you. There are none. Ladies
2 and gentlemen, is there any member of the jury panel or a
3 member of your immediate family or close friends ever been
4 charged with or convicted of a sexual offense? If so,
5 please stand.

6 (No response)

7 The Court - Thank you. There are none. Is
8 there any member of the jury panel or a member of your
9 immediate family who has ever been a victim of a sexual
10 assault? If so, please stand. Whether or not it was --
11 ended up in Court. If so, please stand.

12 (Jurors stand)

13 The Court - All right, ma'am, let -- I'm going
14 to start on the far side over here. Could I get your
15 name, please?

16 Juror - Mary Sanders.

17 The Court - All right. Okay, Ms. Sanders. This
18 is juror number 190. Ms. Sanders, the fact that you've
19 had that experience in your family, would that in any way
20 affect your ability to be fair and impartial, giving both
21 the State and the Respondent a fair trial?

22 Ms. Sanders - I believe that I can.

23 The Court - All right, thank you very much,
24 ma'am. You may have a seat. Sir, your name, please?

25 Juror - Charles Wilkes.

1 The Court - All right, Mr. Wilkes. This is
2 juror 243. Excuse me. And Mr. Wilkes, the fact that
3 you've had this in your -- in your life, in your
4 relationship, sir, would this -- would that in any way
5 affect your ability to be fair and impartial if you were
6 selected in this matter?

7 Juror - No.

8 The Court - Thank you very much. You may have
9 a seat, sir. Ladies and gentlemen, is there any member of
10 the jury panel who has training, experience or who is
11 currently or formerly has worked in the fields of
12 psychiatry or in psychological areas of law, any training
13 at all in those areas? Psychology, psychiatry?

14 (No response)

15 The Court - Thank you. There are none. Is
16 there any member of the jury -- You've met both Mr. Bogle
17 and Mr. Brooks. Is there any member of the jury panel who
18 has ever been involved in any case with either the South
19 Carolina Attorney General's Office or any case involving
20 Mr. Brooks? If so, please stand.

21 (No response)

22 The Court - Thank you. There are none. Ladies
23 and gentlemen, is there any member of the jury panel who
24 has been involved in a prison ministry, prison outreach
25 program or any other program involving contact with folks

1 who are incarcerated either locally or in the South
2 Carolina Department of Corrections? If so, please stand.

3 (No response)

4 The Court - Thank you. There are none. Is
5 there any member of the jury panel or a member of your
6 immediate family who has ever been subject to civil
7 commitment proceedings or been voluntarily or
8 involuntarily civilly committed? If so, please stand.

9 (No response)

10 The Court - Thank you. There are none. Ladies
11 and gentlemen, during the course of this trial there will
12 be information that indicates that Mr. Whitlock has been
13 convicted of a sexual offense in the past and has served
14 his sentence in that case. In other words, he's had that
15 conviction, but he's completed that sentence. Is there
16 any member of the jury panel who believes that knowing
17 that he has had that conviction and that he has served
18 that time, would that in any way prevent you from being
19 fair and impartial in deciding whether or not it is
20 appropriate for the State to seek civil commitment
21 proceedings? Is there any member of the jury panel that
22 feels that that would affect their ability to impartially
23 make the decision with regards to civil commitment? If
24 so, please stand.

25 (No response)

11

1 The Court - Thank you. There are none. Now,
2 ladies and questions I can ask you questions from now on
3 until 5:00 o'clock in trying to determine your ability to
4 be fair and impartial and I'm sure you've picked up by now
5 that any questions that I ask you deal directly with your
6 ability to be fair and impartial and that's all we seek in
7 any case, whether it's a civil case as this is, whether
8 it's a criminal case. We always try to impanel members of
9 the jury that can be fair and impartial and give both
10 sides a fair trial. So maybe it's easy to ask this
11 question so that I don't miss something. Is there any
12 member of the jury panel who knows of any reason why you
13 would not be able to be fair and impartial giving both the
14 State and the Respondent a fair trial with regards to this
15 case? If so, please stand.

16 (No response)

17 The Court - Thank you. There are none. Any
18 additional questions or any further questions from the
19 State?

20 Mr. Bogle - No, Your Honor. Thank you.

21 The Court - Anything further from the defense?

22 Mr. Brooks - No, sir, Your Honor.

23 The Court - All right, I'm going to get y'all to
24 step up one last time real quick. I've got to ask you
25 something real quick.

1 (Bench conference was held in the presence of
2 the panel but out of the hearing of the panel which was
3 not reported.)

4 The Court - Ladies and gentlemen, let me explain
5 to you briefly how we're going to go about selecting
6 jurors. When you selects juries in civil cases it's a
7 little bit different procedurally than it is when you
8 select a jury in a criminal case. If I'm sitting where
9 you are and if I'm -- if I'm nervous or somewhat anxious
10 about standing up and speaking in front of people or being
11 in front of people, trust me, you'll enjoy this process a
12 lot more than you will the criminal process, because when
13 we select juries for criminal Court, if your name is
14 called, you have to come down to the front of the
15 courtroom, stand here, face the back of the courtroom and
16 stand in front of everybody and just stand there while the
17 attorneys make their decision. It can sometimes be a
18 little uncomfortable. But that's not the way we do it in
19 a civil case. In a civil case the way we go about
20 selecting juries is we have -- we have our jury list which
21 is all of your names and that list is in basically
22 alphabetical order. What is going to happen and what's
23 happening right now is, Madam Clerk is going to -- on her
24 computer she has a program which will take this list of
25 jurors and -- the list of all of you -- and it will just

13

1 randomly go through that list and it'll just pull out
2 twenty names, and it will take those twenty names and just
3 put them on a -- what we call a strike sheet. After it
4 pulls twenty, we're going to have an alternate in this
5 case, so it will pull three additional names and put those
6 at the bottom. What we do in civil cases is each side
7 gets what we call four peremptory strikes. In other
8 words, each side for whatever reason they choose can
9 eliminate four names from that list of -- that original
10 list of twenty. Now, there are a lot of reasons I didn't
11 go into the medical field. One of them was I can't stand
12 mathematics, but I know enough math to know that if I
13 start with twenty names and I take away eight, that leaves
14 me with twelve. So when we get this list and the lawyers
15 exercise their strikes, the remaining folks listed on that
16 list, those twelve people, will make up our jury panel.
17 Now, what happens is, when she has this list prepared,
18 she'll give a copy to each attorney. We'll take just a
19 short time and let the lawyers look over that list, kind
20 of gather their thoughts and then when we're ready, Madam
21 Clerk, she'll start first with the State and she'll ask
22 Mr. Bogle for his first strike and he'll give her a number
23 and it'll be one of those numbers one through twenty that
24 appears on the list. So it may be that -- well, just for
25 your information, you know, you have juror numbers. All

1 of you -- I don't know if you're aware of your number, but
2 everyone has a juror number. The numbers you hear the
3 attorneys call out are not juror numbers. They are simply
4 the numbers one through twenty that appear. That's the
5 way they strike. So Mr. Bogle will have -- he'll announce
6 his first strike, then she'll look to Mr. Brooks and he'll
7 give his and she'll just ping-pong back and forth until
8 all the sides have used up all their strikes. And then on
9 the alternates, they each get one strike and they'll do
10 that. Once they've finished that, we'll then have Madam
11 Clerk call out the names of the remaining folks on the
12 list and then when you -- if you hear your name called,
13 bring with you anything you brought to Court and come have
14 a seat in the jury box and you'll make up the panel for
15 the purposes of this case. Okay? So we're going to just
16 be at ease while the attorneys have an opportunity to
17 review this strike sheet. So while they're doing that,
18 ladies and gentlemen, if you just want to remain at ease,
19 you're more than welcome to talk amongst yourselves, just,
20 you know, kind of keep it a little low, but feel free just
21 to relax and we'll get started back in just a minute.
22 Okay?

23 (Brief pause)

24 The Court - Everyone ready?

25 Mr. Brooks - Yes, sir.

15

1 The Court - All right, ladies and gentlemen,
2 we're going to begin the process of jury strikes and so I
3 ask Madam Clerk to go through that process, please.

4 Deputy Clerk - Mr. Bogle, I'll take your first
5 strike.

6 Mr. Bogle - The State is striking number 3.

7 Mr. Brooks - Respondent strikes number 9.

8 Mr. Bogle - The State will strike number 10.

9 Mr. Brooks - Respondent strikes number 11.

10 Mr. Bogle - State will strike number 13.

11 Mr. Brooks - Strike number 12.

12 Mr. Bogle - State will strike number 18.

13 Mr. Brooks - Respondent strikes number 19.

14 Deputy Clerk - And as your alternate, Mr. Bogle?

15 Mr. Bogle - State will strike number 22.

16 Mr. Brooks - 21.

17 Deputy Clerk - I'm just going to confirm the
18 strikes with you. For the State I have the following
19 strikes: number 3, 10, 13, 18 and as your alternate
20 number 22. Is this correct?

21 Mr. Bogle - That is correct, ma'am.

22 Deputy Clerk - For the Respondent I have the
23 following strikes: number 9, 11, 12, 19 and as your
24 alternate number 21. Is this correct?

25 Mr. Brooks - That is correct.

1 The Court - Are there any motions regarding jury
2 selection from the State?

3 Mr. Bogle - No, Your Honor.

4 The Court - Anything from Respondent?

5 Mr. Brooks - No, sir, Your Honor.

6 The Court - All right, Madam Clerk, if you'd
7 please call the names of the juries.

8 Deputy Clerk - Yes, sir. Ladies and gentlemen,
9 as your name is called, if you'll come down and have a
10 seat in the jury box to my left at the direction of the
11 bailiff. Please bring all your personal belongings if
12 your name is called. Juror number 183 Maria K. Roberts,
13 juror number 212, Richard A. Surratt, Jr., juror number
14 143, Sara Anne Merritt, juror number 228, Sarah T. Tuttle,
15 juror number 166 Janet R. Parra, juror number 1, Tracy B.
16 Alves, juror number 222, Todd L. Thompson, juror number
17 27, Karin Burnette, juror number 135, Susan P. Mcelroy,
18 juror number 244, Donna M. Williams, juror number 13,
19 Kathy H. Bigham, juror number 22, Patrick L. Britz, and
20 serving as the alternate is juror number 43, Tricia W.
21 Crenshaw.

22 The Court - All right. Ladies and gentlemen,
23 I want to thank you being back here this afternoon. Now,
24 I'm going to give you some instruction and I think you --
25 it's the same instruction that you got earlier today I

17

1 think from Judge Alford. You'll be given that phone
2 number to follow. I'm going to ask if you would to please
3 call that number after 7:00 o'clock this evening and
4 follow whatever instructions are on that recording. Okay?
5 If you call -- If you call the number and you get a busy
6 signal or you don't get through, just hang up and try
7 again a little bit later. There's going to be a lot of
8 people calling in, but please call that number after 7:00
9 o'clock tonight and follow whatever instructions are on
10 that message. Okay? So thank you very much and you're
11 excused for the balance of the day.

12 (Remaining jury panel exits the courtroom)

13 The Court - And as to the members of the panel
14 here, I'm going to -- in just a moment I'm going to get
15 you to follow the bailiff and he's going to take you back
16 into the jury room and show you where you'll be gathering
17 and meeting. You can introduce yourselves to each other
18 and get to know each other. What I would ask you to do
19 and this instruction would be with you throughout the
20 course of this trial and that is that you don't have any
21 conversation about the case. Now, obviously when you go
22 back there now you're not going to know anything to talk
23 about anyway, other than what I've just shared with you
24 earlier this afternoon, but it's very important that any
25 time you're outside of this courtroom that you have no

1 conversation about the case even amongst yourselves and
2 sometimes jurors will look at me kind of questioning
3 because they believe that their -- that's their job as
4 jurors is to deliberate and talk about the case and it is
5 your job but not until you've heard all of the evidence
6 and heard from both sides, so it's very important that
7 until that time that there be no communication, no
8 conversation about the case. Okay? I have a few matters
9 -- pre-trial matters that I'm going to take up with the
10 attorneys that will helpfully expedite the trial and help
11 it go along quicker, so while I do that, I'm going to have
12 you back in the jury room and like I said, you can get to
13 know each other. If you need anything, just let the
14 bailiffs know. We've got little snacks or something like
15 that that they can get for you if you need anything while
16 you're back there. I'm going to take up these pre-trial
17 matters, which shouldn't take terribly long and then we'll
18 bring you back in and we'll get started. Okay? So please
19 go with the bailiff to the jury room.

20 (Jury exits the courtroom)

21 The Court - All right, ladies and gentlemen,
22 anything we need to take up pre-trial before we get
23 started?

24 Mr. Bogle - Judge, the State filed two motions
25 in limine. I don't know if you have it in front of you.

19

1 I've got spare copies in front of me right here. I did
2 not hand them to you earlier.

3 The Court - Okay, well, I do have them on my
4 computer.

5 Mr. Bogle - Okay. Okay. The State's first --
6 You want me to go ahead and talk about them right now?

7 The Court - Yes, sir. That'll be fine.

8 Mr. Bogle - The State's first motion in limine
9 deals with where Respondent might be going. As Your Honor
10 knows, the Sexually Violent Predator Treatment Unit is
11 located on the campus of Broad River Department of
12 Corrections. In fact, it's the location of the prison
13 known as the former death row. It's the Edisto wing of the
14 prison. In the instant case, the issues before the Court
15 are is the Respondent a sexually violent predator; has he
16 been convicted of the right kind of crime and does he have
17 the mental abnormality of a personality disorder that
18 makes him likely re-offend and that's it. So we would ask
19 that there be no reference or argument about where he
20 would be confined. It's the death row; is it a prison;
21 that sort of thing, because might distract the jury from
22 what they're here for and the only thing they've got to
23 decide was the two things I mentioned before, the type of
24 crime and the mental issue.

25 The Court - All right. Mr. Brooks, do you wish

1 to be heard on that?

2 Mr. Brooks - My only response is that I don't
3 have any problem mentioning the death row or not
4 mentioning that it's formerly known as death row, but I
5 would like and I have done this in the past, even recuse
6 the Judge as to ask questions about where my client is
7 going to be housed, and what I mean by that is he is going
8 to be in a long-term care facility. I have asked
9 questions of witnesses being is it barbed wire, can he go
10 home and obviously the question as being yes it has barbed
11 wire, no he cannot go home when he wants, can he come and
12 go as he please, so I want to make sure that I'm not
13 restricted from being able to paint a picture to the jury
14 that he would be in some long-care confined facility and
15 obviously be able to explain what it is. And I should be
16 able to do that and I can do that, but not necessarily
17 referring it to, you know, it's formerly death row ---

18 The Court - Well, I think obviously those --
19 those references are something to avoid and I think what
20 Mr. Bogle's position is -- And Mr. Bogle you obviously,
21 sir, correct me if I'm misstating it, but -- in other
22 words not to paint this dark bleak situation. You
23 certainly can discuss the fact that it is a confinement,
24 that it is as you indicated, not free to go and come as
25 you please and that there are rules and regulations that

21

1 you must follow, but not necessarily to get into the
2 conditions, either good or bad of the facility. So we'll
3 certainly allow you to do that.

4 Mr. Bogle - Thank you, Your Honor. The second
5 motion and limine is asking the Court to prohibit the
6 Respondent should he testify from invoking his right
7 against self-incrimination regarding a prior conviction to
8 which he pled guilty if he chooses to testify; and second,
9 to prohibit him from seeking a jury instruction inferring
10 that he has a constitutional right not to testify in this
11 proceeding should he choose not to testify. Now, these
12 issues have been dealt with by the case of In Re: Canupp,
13 a Court of Appeals case from 2008. This is a civil
14 action. It's not a criminal action. It's civil in
15 nature. Only a criminal defendant can decline to take the
16 stand altogether. So -- Now, if he takes the stand and
17 there's something out there criminal that's pending, he
18 can choose to exercise his right, but as far as crimes
19 he's already been convicted of, we would suggest you
20 cannot assert that right and certainly cannot ask for a
21 jury charge that he has any such right. And the case law
22 I believe is conclusive on that --

23 The Court - All right. Mr. Brooks?

24 Mr. Brooks - Give me one minute, Judge.

25 The Court - Yes, sir.

1 (Discussion is held between Mr. Brooks and Mr.
2 Whitlock which was not reported.)

3 Mr. Brooks Judge, that's fine. We understand.

4 The Court - All right, you understand that.

5 Okay.

6 Mr. Bogle - Thank you, Your Honor.

7 The Court - All right, so obviously should Mr.
8 Whitlock testify, that he would be required to answer any
9 questions that are asked of him.

10 Mr. Brooks - That's correct.

11 The Court - All right. Anything further from
12 the State?

13 Mr. Bogle - Nothing from the State, Your Honor.
14 There was a preliminary issue about clothing. That seems
15 to have been resolved.

16 The Court - Sure. All right. Mr. Brooks,
17 anything from the Respondent before we proceed?

18 Mr. Brooks - Judge, just to put it on the
19 record, my client indicated he had some questions about me
20 representing him, expressing some displeasure. I told him
21 we would, you know, address that issue. At this time --

22 The Court - All right.

23 Mr. Brooks - -- we would go ahead and address
24 that issue.

25 The Court - All right. All right, Mr. Whitlock,

23

1 let me say this and then I'll certainly hear anything you
2 wish to tell the Court. If you have some issues or if you
3 have some problems or if you don't see eye to eye with
4 everything that Mr. Brooks says or does, let me just say
5 this, you would not be the first person to have that issue
6 because sometimes folks do disagree with their lawyer.
7 That happens. And it happens often. But I always tell
8 folks all the time that, you know, a lawyer's role is to
9 represent your best interest. He is to protect and defend
10 and to prosecute your best interest. And in doing that
11 sometimes there are strategic reasons why things are done.
12 Sometimes there are legal reasons why things are done that
13 sometimes a lay person or a person who's not trained in
14 law may not understand. So I guess what I'm trying to say
15 is, when it comes to trial strategy and how to attack a
16 case or defend a case, either way, that's pretty much in
17 the lawyer's discretion on how is the best way to do that,
18 but if you have any other issues with regards to Mr.
19 Brooks' representation, anything you want to share with
20 the Court, I'll be happy to hear from you.

21 Mr. Whitlock - I just want to make sure he going
22 to represent me to his full ability. That's all.

23 The Court - Okay. Well, and I can tell you
24 this. I can only tell you my experiences. Since I've
25 been on the bench with Mr. Brooks, he is, if not the

1 premiere lawyer in these type of cases, he is one of them.
2 He tries probably more of these cases than anyone that I
3 know in the State of South Carolina. He's an outstanding
4 lawyer and does an outstanding job. I can just tell you
5 that my experience with him has been that he is the utmost
6 professional and he fights hard for his clients. I'm not
7 going to sit here and tell you that he wins all his cases,
8 but -- because I don't know what his track record is. I
9 just know that he's one of the most respected attorneys in
10 the State of South Carolina in these types of cases. He
11 handles them as competently as I've ever watched a lawyer
12 work. So I would be shocked if he didn't give you his
13 best effort, because I've never seen him do anything other
14 than do that. Now, I've had situations where -- and he's
15 had the situations where his clients don't always agree
16 with his decisions as far as trial strategy and how that
17 goes, but I can tell you that he's outstanding, and I
18 don't know that you could've hired -- no matter how much
19 money you may -- would have, I don't know that you
20 could've hired anyone that is more competent to handle
21 these trials. So I can tell you that I'm confident he's
22 done everything and is doing everything he can. I think
23 he's giving you his best efforts. If at any point you
24 think that's not happening, you certainly can address that
25 issue with me and we'll talk about that, but I agree with

25

1 you; I think you want your lawyer to give you the best
2 effort they can give you and I think he's doing that, so -
3 - but if you have any issues, if anything crops up, then
4 you let me know and we'll deal with those. Okay?

5 Mr. Whitlock - Yes, sir.

6 The Court - I don't want you to feel like you
7 can't address the Court. You just let Mr. Brooks know
8 that you need to talk with me and we'll do that. Okay?

9 (No response)

10 The Court - Are you comfortable with him
11 proceeding and representing you in this case?

12 Mr. Whitlock - Yes, sir.

13 The Court - All right, sir. Okay, well, we'll
14 then proceed in that manner. But if at any time you have
15 an issue, you let me know.

16 Mr. Whitlock - All right.

17 The Court - All right. Mr. Brooks, anything
18 further before we proceed?

19 Mr. Brooks - Ready to go, Judge.

20 Court Reporter - Judge, could we take one quick
21 restroom break?

22 The Court - Yes. We'll do that. Before we
23 bring the jury out and get started, we'll take just a few
24 minutes and if you need to use the restroom or get
25 something to drink, let's do that and then we'll get

1 started. Okay?

2 (Recess taken - State's Exhibits 1 through 6
3 marked for identification during recess.)

4 The Court - All right, State ready to proceed?

5 Mr. Bogle - Yes, Your Honor.

6 The Court - Respondent ready to proceed?

7 Mr. Brooks - Yes, sir.

8 The Court - All right, let's bring the jury in.

9 (Jury returns to the courtroom)

10 The Court - All right, ladies and gentlemen,
11 before we get started, let me make a couple of comments.
12 First is, that as we go through this trial, you may be
13 asked to step out of the courtroom and come back in or
14 whatever. As you do that, please feel free to sit
15 wherever you end up as you file in and out. Don't feel
16 like you have to be in the seat you're in now. Okay?
17 Now, I will tell you, if you love where you're at and
18 that's where you want to sit, that's fine. You can sit
19 there, but I don't want you to feel like you have to sit
20 in those seats. The only -- there's only two I guess
21 reserved seats in the jury box and that is the seat where
22 the foreman sits or the foreperson sits and where the
23 alternate sits. So other than those two seats, the rest
24 of you feel free to sit wherever you're comfortable. The
25 other thing is again in dealing with comfort, it's

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1 important to me and it's important to the parties that you
2 as the jury are comfortable so that you can listen to the
3 testimony and listen to the evidence as presented. If at
4 any time during the course of the trial anyone needs to
5 take a break, if you will get my attention, raise your
6 hand, just get my attention, even if we're right in the
7 middle of a witness's testimony, you let me know, I'll
8 stop and we'll take a break. Okay? It's important that
9 you're comfortable. If it's too cold in here or too hot
10 in here, let me know, we'll try to adjust that. I don't -
11 - I don't know if we can do that here or not. In Florence
12 they've got this crazy system that they tell me if we want
13 to change the temperature in the courtroom we've got to
14 call Richmond, Virginia. Don't know what the deal is
15 there, but, you know, here we may have more control, so
16 we'll try to keep the courtroom comfortable for you.
17 Okay? So before we get started I'm going to ask if you
18 would to give Madam Clerk your attention. She's going to
19 place you under your oath as jurors in this case.

20 (Whereupon jury panel is duly sworn by the
21 Deputy Clerk)

22 The Court - All right, ladies and gentlemen,
23 we're about to begin this case In the Matter and the Care
24 and Treatment of O'Bryan Broschaw Whitlock. Ladies and
25 gentlemen, before we start I want to tell you that this

1 trial will probably be very different from what you might
2 expect. Most folks don't have an opportunity to do what
3 you're doing here this week, and that is to sit in on
4 actual jury trial. Most people's experience with regards
5 to jury trial or jury trials is restricted to what they've
6 seen on television or seen in the movies or read in books.
7 And, of course, all of those trials are full of high
8 trauma, intense action, riveting circumstances. It's all
9 for your entertainment. It's Hollywood. And while any
10 number of those things may occur during the course of this
11 trial, what is important for you to understand is that
12 this trial is not for your entertainment. This trial is
13 a fundamental part of our democracy. It is a search for
14 the truth in an effort to make sure that justice is done
15 between the parties that are before the Court. Many times
16 in searching for the truth and making sure that justice is
17 done, that process is slow. Sometimes it's very
18 deliberate, sometimes repetitive. In other words, it's
19 very different from what you may have seen on television,
20 read in books or seen in the movies. This courtroom is a
21 place of honor that is dedicated to the protection and to
22 the preservation of citizens' rights through what many
23 have called the greatest justice system ever created. The
24 attorneys that appear before you represent the interest of
25 their clients and they are advocates for their clients,

1 but first and foremost they are officers of the Court
2 sworn to uphold the integrity and the fairness of our
3 judicial system and to help you in your search for the
4 truth. You should expect them to be professional,
5 competent and ethical in the performance of their duties.
6 Remember that you have taken an oath to try this case and
7 to reach a fair and a just verdict, and so you are also
8 expected to be professional, reasonable and ethical in the
9 performance of your duties, which I have no doubt you will
10 do, and I want to thank you for accepting your role as
11 jurors in this case. Now, what I'm going to tell you
12 right now is really meant to serve as an introduction to
13 the trial of this case. It is not a charge on the law.
14 I will charge you the law that is applicable to this case
15 at the close of the case, but this is basically an
16 introduction to kind of let you know how things are going
17 to go and what to expect as we go through the course of
18 this trial. You have been selected as fair and impartial
19 jurors whose purpose is to find and to determine the facts
20 in this case. Ladies and gentlemen, you are the sole
21 Judges of the facts in this case. If at any time I make
22 any comment about the facts, you must disregard my
23 comments, because only you the jury are allowed to have
24 any say as to what the facts are in this case. You are to
25 determine the facts from the testimony that you hear and

1 any other evidence that may be presented during the course
2 of this trial. You should not be influenced by any
3 opinions or statements you may have heard outside this
4 courtroom. It is especially important that you perform
5 your duty of determining the facts diligently and
6 conscientiously because ordinarily there's no way for us
7 to correct an erroneous determination of facts by a jury.
8 When you comply with your oath to impartially determine
9 the facts of this case, then you have fulfilled your duty
10 as jurors and no one will have any right to criticize your
11 verdict whatever it may be. Now on the other hand but
12 with equal emphasis, the same law that makes you the
13 Judges of the facts makes me the Judge of the law. The
14 law as given by the Court is the only law that you may
15 consider, and you must accept and follow it even though
16 you may disagree with it. I'm not allowed to tell you
17 what I think about the facts of this case or anything
18 about the facts of this case, and you on the other hand
19 are not allowed to disagree with me about what the law is
20 or what you think the law should be. Your job is to take
21 the law as I give it to you, apply it to the facts as you
22 find the facts from the testimony of witnesses and any
23 other evidence that comes in during the course of the
24 trial and arrive at your verdict. Now until I tell you to
25 begin your deliberations, you must not discuss this case

1 with anyone and that includes even amongst your fellow
2 jurors. You as jurors must decide this case based solely
3 on the evidence that is presented here within the four
4 walls of this courtroom. This means that during this
5 trial you are not to conduct any independent research
6 about this case, the matters that are brought up in this
7 case, anything about the individuals involved in this
8 case. In other words, you should not consult anything,
9 whether it be dictionary, reference materials, search the
10 internet, websites, blogs or use any electronic tools to
11 obtain information about this case or in trying to assist
12 you in deciding this case. Please do not try to find out
13 any information from any source that is outside the
14 confines of this courtroom, because that would be highly
15 improper. Until you retire to deliberate, you may not
16 discuss this case with anyone. After your deliberations
17 have begun, you may begin discussing the case with your
18 fellow jurors, but you are not allowed to discuss the case
19 with anyone else until after you have returned a verdict
20 and this case is over. I hope that all of you will find
21 this case interesting and note-worthy. I know that many
22 of you, many of us in this day and age use cell phones, i-
23 phones, blackberries, internet, other tools of technology
24 in communicating with other folks. It is important,
25 ladies and gentlemen, that you do not use any of these

1 devices in any way, shape or form in dealing with this
2 case or the facts in this case. You may not communicate
3 with anyone about this case on your cell phone, through e-
4 mails or a blackberry or an i-phone, no text-messaging or
5 twittering or whatever that's called. You're not to
6 search any of the social networking sites such as
7 Facebook, My Space, You-Tube whatever and I guess all of
8 that is to say this, you are to decide this case based
9 solely on the evidence that is presented during this Court
10 -- in this courtroom and on nothing else. I tell jurors
11 whenever they leave the courtroom to relax and forget
12 about this case until you return back. So please keep
13 that in mind as we go through the course of this trial.
14 It is important that you keep an open mind and that you do
15 not decide any issue in this case until all of the
16 evidence has been presented, the attorneys have had an
17 opportunity to address you with their closing arguments
18 and then I've instructed you on the law that is applicable
19 to this case. Now in just a minute you'll hear from Mr.
20 Bogle, and he will make what is called an opening
21 statement. Ladies and gentlemen he will in that statement
22 explain to you what he believes the issues are in this
23 case and once he concludes, then Mr. Brooks will have an
24 opportunity to address you and to make a statement
25 regarding his belief of what the evidence will show. What

1 is important for you to understand is this, what the
2 attorneys share with you in their opening statements is
3 not evidence. It is merely their contentions as to what
4 they believe that the evidence in this case will show.
5 The evidence in this case is going to be presented to you
6 by witnesses through sworn testimony and then any other
7 exhibits that may come in during the course of this trial.
8 And during the course of the trial from time to time you
9 may hear one of the attorneys say something along these
10 lines, Judge, we have a matter of law we need to take up
11 with the Court or, Your Honor, may we approach the bench.
12 Now, during those times I may ask you to step back into
13 your jury room. If I do that, if I ask you to step back
14 into the jury room, the only reason I would ask you to do
15 that is to protect you from any comments that might be
16 made during those side bars. In other words, as I told
17 you earlier, I'm not to have any influence over you with
18 regards to the facts. Sometimes when I'm dealing with a
19 matter of law with the attorneys, it requires that I make
20 some comment about the facts as they relate -- as it
21 relates to my ruling, and so to protect you from that I
22 may ask you to step into your jury room so that I can do
23 that and not have any influence over you as the fact
24 finders in this case. In determining what the true facts
25 are in this case, ladies and gentlemen, you have to decide

1 whether or not the testimony of any witness is believable
2 or not. It is going to be my duty or my job to determine
3 whether certain testimony is allowed into evidence at all,
4 but once testimony is allowed into this record, whether or
5 not you believe it is solely up for you to decide. In
6 deciding whether to believe a witness, you have the right
7 to consider whether the witness has an interest in the
8 result of the trial, whether the witness is prejudiced
9 toward one side or the other, whether the witnesses had
10 opportunities to see and hear and discuss the matters that
11 they testified about, as well as the way a witness acts on
12 the witness stand. You have the right, ladies and
13 gentlemen, to consider anything that is in this record
14 that will help you in evaluating the believability of the
15 witnesses, the testimony of the witnesses. That means it
16 is your duty to pay close attention to the witnesses,
17 listen carefully to them, listen carefully to the
18 attorneys as they ask their questions into the Court.
19 Please do not let your thoughts wander, but pay close
20 attention to all of the testimony and the evidence in this
21 case, so that once all of that has been presented and the
22 attorneys have had an opportunity to address you with
23 their closing arguments and I've given you the law, at the
24 conclusion of all of that, you will then be in a position
25 to go back into your jury room and to deliberate and

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1 discuss this case and arrive at a verdict. Okay? Now,
2 before I turn it over to the attorneys, let me ask first
3 of the State, are there any objections or exceptions to
4 the Court's opening remarks?

5 Mr. Bogle - There are none, Your Honor.

6 The Court - Anything from the Respondent?

7 Mr. Brooks - None.

8 The Court - All right. Ladies and gentlemen,
9 please if you would give both Mr. Bogle and Mr. Brooks
10 your undivided attention as they address you with their
11 opening remarks. Mr. Bogle?

12 Mr. Bogle - Thank you, Your Honor. May it
13 please the Court.

14 The Court - Yes, sir.

15 Mr. Bogle - Ladies and gentlemen, as I
16 introduced myself earlier, my name is Jim Bogle. I'm with
17 the Attorney General's Office in Columbia. People often
18 ask why us, why not your county attorney or your local
19 solicitor, somebody up here doing these cases? And I'll
20 tell you, it's a simple answer. When the legislature
21 passed this law, they said the attorney general's office
22 does this cases statewide. So me and another guy named
23 Lloyd Flores, we have the State divided in half and my
24 half includes York County. This is a case -- it's a civil
25 commitment process. The Judge talked about that. O'Bryan

1 Broschaw Whitlock, the gentlemen sitting to rear, over
2 there with his attorney, he has been convicted of certain
3 crimes which are called sexually violent crimes. When the
4 legislature passed this law, they called it the Sexually
5 Violent Crime Act, and basically they list in that law
6 sixteen different crimes that are called sexually violent
7 crimes. He's been convicted of three of them. This
8 happened back in 2003. He served his time; he's done with
9 his prison sentence. What the law says, when people are
10 nearing the end of their prison time they're looked at to
11 see whether or not they should be put through this
12 process. The vast majority do not, but some do, and
13 that's why we are here today. What the law says is, we
14 have to prove to you, the State has to prove to you beyond
15 a reasonable doubt certain things and that's an important
16 point of term. The Judge will explain that to you at the
17 end. This is a civil courtroom. This is the Court of
18 Common Pleas. Normally you might here a case involving an
19 accident or a car wreck or maybe a medical malpractice
20 case or something like that. The burden of proof in cases
21 like that, how much proof they have to prove to you to
22 convince you is preponderance of the evidence, just below
23 or fifty percent. In criminal Court down the hall, those
24 criminal cases have to be proven beyond a reasonable
25 doubt, different burden of proof and much higher. To be

1 honest with you about that, it's a higher burden of proof.
2 Because this case involves a civil commitment of a guy who
3 has already finished his prison term, then the law
4 requires me, the State's evidence, to prove to you beyond
5 a reasonable doubt what's in our case. Now, here's what
6 we're looking for here today. The things we have to prove
7 to you are as follows: First of all, has O'Bryan Broschaw
8 Whitlock been convicted of a sexually violent offense? He
9 has. He's been convicted. He pled guilty in Family Court
10 in 2003 to three different counts of criminal sexual
11 conduct with a minor in the first degree, three different
12 victims, all young boys, nine and ten years old. And
13 there will be testimony about that today. I don't believe
14 there will be any objection to those records coming before
15 you. We've got a copy of the Court Order which sentenced
16 him and then the three petitions -- that's like an
17 indictment in General Sessions Court -- it's the charging
18 document charging him with those offenses. The next thing
19 though, requires a little more thought and more
20 difficulty. Does he have a mental abnormality or a
21 personality disorder that makes him likely to commit the
22 same types of crimes again if he gets out, unless we
23 confine him to a secure place for long-term control, care
24 and treatment. And there is such a place. It's in
25 Columbia. It's run by the Department of Mental Health.

1 When they passed this law, the General Assembly told the
2 Department of Mental Health, set up a place where guys
3 like this can be treated. So two things to prove to you,
4 has he been convicted of the right kind of crime and next,
5 does he have that mental abnormality or that personality
6 disorder which makes him likely to offend the same way
7 again. In this case it's a little different than most of
8 them. We started out with a hearing here in Rock Hill, or
9 here in York, and what the Judge said -- the Judge
10 appointed a doctor from the Department of Mental Health to
11 examine the guy, a Dr. Jeffrey Musick. You may hear from
12 him this week. Dr. Musick finished his report and said,
13 I don't think the guy needs to be committed; he's been
14 convicted of the right kind of crime; he's got a
15 personality disorder. It's called anti-social personality
16 disorder, but the doctor didn't think he needed to be
17 committed. Now, when they passed this law, they gave the
18 State an option. If we have problems with that report, we
19 can hire at our own expense an independent doctor to take
20 a second look. You'll be hearing from him during the
21 State's case. Dr. Bill Mulbry, sitting over there with
22 the dark tie and the white shirt -- Dr. Bill Mulbry is a
23 psychiatrist with the Medical University of South
24 Carolina. He is the State's witness. He examined Mr.
25 Whitlock. He looked at all of the documents we had. He

1 looked at Dr. Musick's report. He ran some tests, which
2 are commonly done in the psychiatric profession, of Mr.
3 Whitlock, and his recommendation is that this young man
4 does have that anti-social personality disorder, but that
5 mental abnormality is such that it causes him great degree
6 in controlling his behavior, and yes, he needs to be
7 committed. So that's the testimony you'll be hearing
8 from; these are the type of documents you'll be looking
9 at. I ask you to keep an open mind, listen to everything,
10 follow the Judge's instructions on the law and reach a
11 verdict in this case. Your Honor, thank you.

12 The Court - Thank you, Mr. Bogle. Mr. Brooks?

13 Mr. Brooks - Ladies and gentlemen, again I'm
14 Charles Brooks, and I represent Mr. Whitlock seated over
15 at the table with me, and I'll start off by saying I'm
16 pretty much joining consensus with what Mr. Bogle
17 explained to you about the statute and the process and all
18 of that. Obviously, while he has Dr. Mulbry, we do have
19 Dr. Musick in the back who indicated, as Mr. Bogle has
20 told you previously, looked at everything, read everything
21 and determined that Mr. Whitlock -- or rendered a report
22 saying Mr. Whitlock did not need to be committed. And
23 that's basically what you've got. You've got one doctor
24 saying this and one doctor saying that after both of them
25 read over everything, looked at everything in terms of Mr.

1 Whitlock. One doctor's saying he should be committed, the
2 Department of Mental Health doctor or the first initial
3 doctor that read through everything, did everything, said
4 while he has some problems, we don't feel that he needs to
5 be committed. Ladies and gentlemen, my client is entitled
6 to a trial on this issue and you guys happen to be the
7 people selected to hear this issue. And it's our position
8 that once you hear everything and you weigh it and when
9 you weigh it with the standard that the Judge has
10 indicated and Mr. Bogle has indicated beyond a reasonable
11 doubt, that you will conclude that my client does not need
12 to be -- does not meet that criteria of the SVP, and I say
13 SVP for short to make it simple, I'm probably a little bit
14 more -- simplify it a little bit than Mr. Bogle has.
15 Basically, our doctor says -- Department of Mental Health
16 doctor says he should not be committed and we think that
17 once you hear that testimony with an open mind, that you
18 will come to that conclusion that he should not be
19 committed. And we hope to be brief and let you listen to
20 all this testimony and come back with that conclusion.
21 Thank you.

22 The Court - Thank you, Mr. Brooks. Mr. Bogle,
23 you may call your first witness, sir.

24 Mr. Bogle - Thank you, Your Honor. May it
25 please the Court. We call Dr. Leonard William Mulbry, Jr.

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1 The Court - All right, sir, if you'll come
2 around and be sworn.

3 Dr. Leonard William Mulbry, Jr., after being
4 first duly sworn, testifies as follows -

5 Direct Examination

6 by Mr. Bogle -

7 Q Would you please state your full name and tell us
8 your county of residence?

9 A My name is Leonard William Mulbry, Jr., and I live in
10 Charleston.

11 Q And Dr. Mulbry, how are you currently employed?

12 A I have a private practice in forensics psychiatry,
13 but the vast majority of the work I do is for the Medical
14 University of South Carolina.

15 Q What professional degrees do you possess?

16 A I have a master's degree, a -- I'm sorry -- I have a
17 bachelor's degree in science, a master's degree in
18 pharmacology, medical degree, a number of residencies and
19 fellowships, and I also course (sic) and train in general
20 and forensic psychiatry.

21 Q As a psychiatrist, a psychiatrist is a medical
22 doctor. Is that correct?

23 A That's correct.

24 Q Okay. Are you licensed to practice psychiatry in
25 South Carolina and any other states?

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1 A I'm also licensed in California.

2 Q Okay. What basically is the study of psychiatry?
3 How would you describe that field of study?

4 A Psychiatry treats mental illnesses, mood disorders,
5 depression, bipolar disorder, ADHD, attention deficit
6 hyper-activity disorder, schizophrenia, post-traumatic
7 stress, anxiety disorders, a catch-all really for all of
8 the mental illnesses that are really not very well
9 understood. As a distinction to a neurologist who treat
10 strokes and epilepsy and sort of structural brain
11 problems, we treat the more difficult -- I think -- the
12 difficult to understand problems like mood disorders.

13 Q Now, doctor, what -- have you had specialized
14 training within the field of psychiatry?

15 A I have. I -- and am not only trained in general
16 psychiatry, but I did a year-long fellowship in forensics
17 psychiatry.

18 Q All right, you say forensics psychology (sic), what
19 does the work forensic mean when associated with the word
20 psychiatry.

21 A Forensic just means legal and when -- forensics -- it
22 turns out that the courts have a tremendous need for
23 evaluations of individuals that are going through the
24 courts. The vast majority of what I do is determine
25 whether or not people are okay to go to trial. We do what

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1 are called competency to stand trials. In other words, as
2 you can well imagine people with mental illnesses bump up
3 against the judicial system every day, and the courts want
4 advice about whether or not they're able to go to trial
5 and were they -- how crazy were they at the time that they
6 committed their crimes and they want to know questions
7 like that. We ---

8 Q All right -- I'm sorry, go ahead.

9 A We have special training in those kinds of
10 evaluations and write reports to guide the courts on
11 whether people are okay to go to trial or not.

12 Q Are you board certified in forensic psychiatry?

13 A I am.

14 Q Would you tell the jury what the process you have to
15 go through is to become board certified in that field?

16 A In -- well, first of all you have to do a general
17 psychiatry residency and you have to be board certified in
18 general psychiatry and then you spend a year actually
19 studying a great deal of law and doing a tremendous number
20 of evaluations, and you do them with a wide variety of
21 people, so you see different ways of doing it. You
22 accumulate a year's worth of experience and then you take
23 a rather extensive written examination, you submit the
24 number of cases that you've done and apply for -- you get
25 a number of recommendations from different people and

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1 apply for board certification in forensics.

2 Q About how much of your practice is dedicated to the
3 field of forensic psychiatry?

4 A Essentially a hundred percent.

5 Q And as your work as a forensic psychiatrist, does
6 that allow you conduct forensic psychiatric evaluations of
7 people?

8 A It does.

9 Q Approximately how many people have you so evaluated?

10 A Five hundred to a thousand.

11 Q Okay.

12 A Close to a thousand.

13 Q Have you been previously recognized as an expert
14 witness by the courts of this state in the field of
15 psychiatry and forensic psychiatry?

16 A Yes.

17 Q About how many times?

18 A Close to forty now.

19 Q Okay.

20 Mr. Bogle - Your Honor, at this time we'd like
21 to offer Dr. Mulbry as a expert witness in the field of
22 psychiatry and forensic psychiatry.

23 The Court - You wish to voir dire the witness
24 regarding that?

25 Mr. Brooks - No questions. He's qualified.

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1 The Court - All right. Dr. Mulbry is certainly
2 qualified as an expert witness in that field and he'll be
3 allowed to testify as such.

4 Mr. Bogle - Thank you, Judge.

5 Q Now, in this particular case, how many evaluations
6 have you done involving the Sexually Violent Predator Act,
7 people who might be going into or the State wants to put
8 into the Sexually Violent Predator Treatment Program for
9 finding them treatment? How many of those have you worked
10 on?

11 A A little over twenty.

12 Q Okay. And do you work in connection with any other
13 doctors in your practice?

14 A I work in the Sexual Behaviors Lab at MUSC. Dr.
15 Dwyer developed the Lab at Columbia and moved to
16 Charleston about a year or two ago, and so we've developed
17 a very active laboratory for evaluations of sexual
18 behaviors, and as a function of that lab, working in that
19 lab, we do quite a few cases.

20 Q Now, of these evaluations you've done for this
21 particular law, about what percentage or how many have you
22 found did not need to be committed to the treatment unit
23 run by the Department of Mental Health?

24 A A little -- a little over half --

25 Q Okay.

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1 A -- at this point.

2 Q Now, in this particular case, were you called upon or
3 asked by our office to conduct such an evaluation of
4 O'Bryan Broschaw Whitlock?

5 A I was.

6 Q Can you describe to the jury your protocol for doing
7 an evaluation in this type of case that you used on Mr.
8 Whitlock?

9 A It starts out with a rather extensive file. I have
10 it. It's about -- we get a file about -- really about
11 that thick. And so you go over all of the records and
12 these would include school records, every -- every
13 psychiatric record they might have. It includes then all
14 of the records around the time of their arrest and their
15 charges. It includes all of the records that we can get
16 from their actual trials. It includes all of the records
17 that come from the jails and the prisons where they have
18 been, again, all psychiatric and all medical records are
19 usually there, any of the -- we go through all of the
20 witness statements, all of the statements that the
21 defendant has made, virtually every record that we can get
22 our hands on that is any way pertinent to their
23 psychiatric state or the charges that have been brought
24 against them.

25 Q Now, in a case like this, in this particular case,

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1 how are you paid to conduct this evaluation of Mr.
2 Whitlock?

3 A I'm paid seven hundred and twenty dollars a day.

4 Q Okay. Is that your salary through the Medical
5 University or paid by us or how's that done?

6 A That's may -- that's my salary from the Medical
7 University.

8 Q Okay. Does that change depending on the number of
9 cases like this that you do?

10 A No.

11 Q Okay. Now, in this particular case, as part of this
12 evaluation, did you meet with Mr. Whitlock and interview
13 him?

14 A I did.

15 Q Is the man you met with present in the courtroom
16 today?

17 A He is, over here.

18 Q Okay.

19 Mr. Bogle - Let the record reflect he identified
20 the Respondent.

21 Q About how many occasions did you sit down and talk to
22 Mr. Whitlock and how many hours were involved in doing
23 that?

24 A I think we talked on two occasions for a total of
25 about five hours.

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1 Q Now, you talked a minute ago about the type of
2 information you reviewed. Was there -- you gave a general
3 description of written information that you looked at. Is
4 there anything else that you haven't mentioned that you
5 looked at as far as a file on (sic) Mr. Whitlock goes?

6 A Well, of course, there would be -- it would include
7 our interviews and it would include all of the testing
8 that Dr. Dwyer did and gave us access to.

9 Q Now, the information that you looked at, how did you
10 receive that information? Where'd you get it from?

11 A Well, all of the background information came from the
12 State's Attorney General office. All of the testing data,
13 of course, we generated in our lab and then during -- and
14 then rest would be during my interviews.

15 Q Okay. Now, this written information, is this the
16 type of information that is reasonably relied upon by
17 experts in your field?

18 A Yes, sir.

19 Q And did you consider and rely upon this information
20 in addition to the testing and interviews of Mr. Whitlock
21 in reaching your opinion on this matter?

22 A Yes, sir.

23 Q Now, can you explain to the jury how a person's past
24 sexual behavior relates to his future chances of sexual
25 behavior?

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1 A Predicting behavior, as you can imagine, is a very
2 difficult thing to do, and we start with the general rule
3 that the best predictor of future behavior is past
4 behavior. And so that's why all this historical data is
5 so important, is because you look at how people respond in
6 certain situations in the things that they do based on
7 their personality and it guide you into coming up with
8 some sense of how they would respond to similar situations
9 in the future.

10 Q Now, Doctor, based upon your review -- let me ask you
11 one other question, though. Was there any information
12 that you wanted to get and could not get?

13 A There were some records from Avalonia and the Rock
14 Hill Boys' Home from about 2002 that were missing, that
15 were gone. We tried to obtain them and I think they
16 burned -- a building burned down or there was -- they were
17 not obtainable.

18 Q Okay. Did the inability to get these records affect
19 the opinion you're going to give us today or change the
20 opinion you're able to reach?

21 A No.

22 Q Now, Doctor, based upon your interviews with Mr.
23 Whitlock and your research into the case, has he been
24 convicted of a sexually violent offense?

25 A He has.

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1 Q Okay. I'd like to hand you right now what's been
2 marked as Plaintiff's Exhibit Number 1. This is the
3 Family Court Order of conviction from 2003 finding him
4 guilty. Is that a document you've seen, that five-page
5 Order?

6 A Yes, sir.

7 Q Okay. And it references three different charges
8 where he pled guilty to and I'd like to hand you as
9 Plaintiff's Exhibits 2, 3 and 4 the charging document, the
10 Juvenile Petition on Mr. Whitlock. The first one, Exhibit
11 Number 2, which is Docket Number 03-285; then 03-287 is
12 Exhibit Number 4; and 03-288 is Exhibit Number 5. Okay.
13 Were these sexually violent crimes of which he was
14 convicted?

15 A Yes, sir.

16 Q Okay.

17 Mr. Bogle - Move to introduce these into
18 evidence at this time, Your Honor.

19 The Court - Any objection?

20 Mr. Brooks - No objection.

21 Court Reporter - Which numbers?

22 The Court - 1, 2, 3 and 4?

23 Mr. Brooks - 1, 2, 3 and 5, I believe.

24 Dr. Mulbry - 5.

25 The Court - Or is it 5?

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1 Dr. Mulbry - 5, 4, 2, 1.

2 (Documents marked into evidence as Plaintiff's
3 Exhibits 1, 2, 4 and 5.)

4 Q Now, Dr. Mulbry, what were the crimes that are set
5 forth right here? What crimes are these?

6 A Those are -- those were all three criminal sexual
7 conduct with a minor.

8 Q Okay, in what degree?

9 A First degree.

10 Q What degree was that?

11 A First degree.

12 Q First degree? Is that the highest degree of the
13 criminal sexual conduct?

14 A It's the most serious.

15 Q Okay. Now, was it necessary for you to study the
16 details of these crimes in order to render an opinion
17 about whether or not Mr. Whitlock should be committed?

18 A It was.

19 Q Okay, and why is that necessary?

20 A Well, because the type of offense that occurred is
21 important here, particularly in the case of juveniles. In
22 this case Mr. Whitlock was a juvenile at the time that
23 these charges occurred. And juveniles make bad decisions
24 and do foolish things on a pretty regular basis actually,
25 and the -- and often times just grow out of it. There are

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1 times that you basically look at acts that a juveniles
2 occur (sic) and you say, well, he was a kid, he was young,
3 he made a bad decision. But in this case there are any
4 number of charges. There's way more than one bad
5 decision. And the type of offense, the nature of the
6 offenses is significant, specifically in the use of
7 violence, and that's very significant because we know that
8 there's data that correlates that people who have used
9 violence are more prone to re-offend in the future, so the
10 nature of the act was important in terms of determining
11 future dangerousness.

12 Q Okay, Doctor, then based on that, could you please
13 tell the jury about the underlying details of these three
14 criminal sexual conduct with a minor in the first degree
15 offenses? Can you explain why these details were
16 important to you?

17 A In -- these all took place in -- in roughly early
18 2003 and there's three separate charges. The first one --
19 and I'll -- I'll read it -- Mr. Whitlock forced a nine
20 year-old victim to perform oral and anal sex in a wooded
21 area behind his apartment complex. When the victim
22 refused to comply, Mr. Whitlock struck him on the head
23 with his fist and choked him until he submitted. The --

24 Q Okay. Go ahead. Now, what about the second one?

25 A The second charge, again, criminal sexual conduct

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1 with a minor, was a ten year-old male who accompanied him
2 onto a parking deck and Mr. Whitlock asked him to perform
3 oral sex. When the victim said he was not like that, Mr.
4 Whitlock grabbed him around the neck, and as the victim
5 tried to pull away, Mr. Whitlock forced him to the ground,
6 pulled down his pants and performed anal sex. That victim
7 went to the authorities.

8 Q Okay. And the third one?

9 A And in the third charge, Mr. Whitlock forced a nine
10 year-old victim to perform oral sex by hitting him in the
11 abdomen with his fist after the victim initially refused.
12 It was reported that Mr. Whitlock had forced that victim
13 into oral sex on two earlier occasions.

14 Q Now, was there any significance to these crimes in
15 that there was not just the sexual crime but also like
16 violent acts, such as choking or hitting or striking?

17 A The -- striking is the -- is the -- the violence of
18 the -- of the acts themselves in each of the cases. And
19 yes, that was very important in terms -- to my mind -- in
20 terms of looking at the nature of the crime and likely for
21 something like this to reoccur.

22 Q Okay. Now, when he pled guilty to those three
23 particular crimes, the ones you've got in front of you --
24 before I ask you this, let me ask you another question
25 though. Is it necessary in order to form a picture of Mr.

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1 Whitlock's likelihood to re-offend -- is it necessary to
2 examine criminal charges that were brought for where he
3 wasn't convicted?

4 A Looking at charges is appropriate. It even goes into
5 some of the instruments that we use, some of the tests
6 that we do to determine risk, so yes, the number of
7 charges is also significant.

8 Q Okay, why is it -- why is it important to look at
9 things where the guy wasn't even convicted of them, but he
10 was charged with them? Why is that important?

11 A Well, because it would indicate that even though
12 there was not enough evidence to actually incarcerate him
13 or to punish him for that particular crime, there were a
14 number of other crimes of -- were like this that were of
15 similar forms, and the fact that they were like that is
16 signifi -- that there are charges like that is
17 significant.

18 Q Okay. Let me hand you an exhibit, certified copy --
19 this is Plaintiff's Exhibit Number 3 -- a certified copy
20 of another Petition brought in Family Court and this one's
21 Docket Number 03-286, which is also mentioned in that
22 Court Order, Exhibit Number 1. Is that a Petition that
23 you also looked at?

24 A Yes. Yes.

25 Q Okay. And was it necessary for you to examine the

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1 underlying charges in that case even though the charges
2 was dismissed by the Court --

3 A Yes.

4 Q -- to determine about -- make a determination about
5 Mr. Whitlock?

6 A Yes, sir.

7 Q What were the underlying details of that particular
8 crime and that particular victim? First of all, what was
9 the crime?

10 A Well, the crime actually -- I think was finally -- it
11 started out as criminal sexual conduct first degree.

12 Q With a minor?

13 A With a minor.

14 Q Okay. And what was the underlying details in that
15 particular crime?

16 A About two years earlier, back in 2000 -- back in
17 2002, Mr. Whitlock had been charged -- was charged with
18 the act of -- apparently he somehow got a younger boy to
19 lie down and inserted sticks in his rectum.

20 Q Okay. Let me show you another exhibit, Exhibit
21 Number 6. I think we're -- this is a charge, a Juvenile
22 Petition, 02-73. What is the -- another one that was not
23 convicted of, but was also brought against him. What was
24 the charge there? I think that be the one you just talked
25 about.

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1 A That would be the one -- I'm sorry -- the names are
2 similar.

3 Q Okay.

4 A That's the one I just mentioned. The other one --
5 the first one was another young -- another young boy who
6 was -- that there was a charge of him forcing into oral
7 and anal sex but turned out that -- there was a question
8 about whether it was consensual and that charge was, I
9 believe, not pressed.

10 Q Okay, and that'd be Number 3, Exhibit Number 3?

11 A Yes, sir.

12 Q And Exhibit Number 4 is a 2002 one involving the
13 objects?

14 A Yes, sir, that was the stick -- yes, sir.

15 Q Okay.

16 Mr. Bogle - Move to introduce these two into
17 evidence, Your Honor, Exhibit 3 and Exhibit 6.

18 The Court - Any objection?

19 Mr. Brooks - No objection.

20 The Court - All right, without objection, 3 and
21 6, State's 3 and 6.

22 (Documents marked into evidence as Plaintiff's
23 Exhibit 3 and 6.)

24 Q Now, Dr. Mulbry, was it also important to look at the
25 -- Mr. Whitlock's educational and family history to see

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1 how that played into your report, of your analysis of him?

2 A Yes, in terms of his upbringing, yes, sir.

3 Q Were there any significant items in his personal
4 history that you found significant in your analysis or
5 your research about Mr. Whitlock?

6 Mr. Whitlock - Yes, sir.

7 A The --

8 Mr. Bogle - Excuse me, Your Honor.

9 The Court - Excuse me. Ladies and gentlemen,
10 would you step back into the jury room so I can take up
11 this matter. Let's have no conversation about the case.

12 (Jury exit the courtroom)

13 The Court - All right, while the witness is on
14 the witness stand being examined there's a disturbance
15 coming from over at Respondent's table. What's going on?

16 Mr. Whitlock - Your Honor, you want me to come
17 up there?

18 The Court - No. You can stand and tell me what

19 ---

20 Mr. Whitlock - I asked a question that I want to
21 object about the doctor expert, but me and my lawyer
22 didn't talk about it; we didn't get to discuss it, so I
23 was asking him why he didn't discuss it. That's the only
24 disturbance, sir. I apologize.

25 The Court - Well, no, that's okay. It's just

1 that you could do that without getting loud. What's
2 important, Mr. Whitlock, is conversations between you and
3 your lawyer are private, and you raised your voice -- Now,
4 you weren't yelling, but when your voice gets louder,
5 members of the jury can possibly hear what's going on over
6 there and they're not -- that's not appropriate.

7 Mr. Whitlock - Yes, sir.

8 Mr. Brooks - Judge, I've been trying -- trying
9 to explain to the young man that Mr. Bogle will ask
10 questions first, then I get a chance to cross-examine him.
11 Obviously these things about incidents that occurred,
12 dismissed, we've had these issues before. I've told him
13 that all this stuff that's coming in -- and obviously I
14 would have a chance to cross-examine him on it.

15 The Court - Do you understand that, Mr.
16 Whitlock, that Mr. Bogle, he called Dr. Mulbry, so that's
17 his witness and he gets to questions him at length, but
18 when he's finished, Mr. Brooks is going to have an
19 opportunity to also question him at length on your behalf.
20 In other words, we're not just going to hear from the
21 State's side. Mr. Brooks is going to have every
22 opportunity to question this witness as well, so while
23 it's important that you do communicate with Mr. Brooks and
24 let him know certain things, he's over there, he's taking
25 it all in, making notes -- he's -- whether it be on paper

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1 or mentally -- and he's going -- he's going to have an
2 opportunity to raise questions -- to ask questions of this
3 witness. Okay?

4 Mr. Whitlock - All right, but what if it's
5 something like we disagree with and we want to object, you
6 know what I'm saying, something that I feel like ain't
7 true and don't need to be said?

8 The Court - All right, here's the thing. The
9 witness is allowed to testify to information and things
10 that he has. Mr. Brooks is going to have an opportunity
11 to question him, cross-examine him on those issues. If
12 there is something that's said that is objectionable, Mr.
13 Brooks will make that objection, but up until this point,
14 there hasn't been anything that has been testified to that
15 is objectionable under the record, but if there's any
16 reason to make an objection, Mr. Brooks will make it.
17 Okay?

18 Mr. Whitlock - Okay.

19 Mr. Brooks - I think what my client is -- like
20 it's -- is under confusion is that, even though these
21 incidents that Dr. Mulbry testified to the charges ---

22 The Court - Dismissed.

23 Mr. Brooks - -- dismissed, those --

24 The Court - He shouldn't be allowed to go into
25 that.

1 Mr. Brooks - They -- well, instead of objecting,
2 I know they're coming in.

3 The Court - Right.

4 Mr. Brooks - And I've explained to him that
5 they're coming in, but obviously I have an opportunity to
6 cross-examine him on it.

7 The Court - Correct.

8 Mr. Brooks - And that's what I'm trying to get
9 my client to understand and refrain -- is that all of the
10 histrionics and loud talking actually serves to dis-serve
11 him in this case.

12 The Court - Yes. It's very important, Mr.
13 Whitlock, that you maintain your composure, speak with Mr.
14 Brooks, talk with him and do it quietly, so that, you
15 know, the jury's not looking over there going, what's
16 going on over there at his table. I mean you don't -- you
17 just need to make sure that your conversations remain
18 private and not disturb the Court, not disturb Mr. Bogle
19 in his direct examination. But I can assure you that --
20 and I understand how it can be kind of nerve-racking when
21 you're not a lawyer and you're not used to this, but Mr.
22 Brooks is going to have his time with this witness. He's
23 going to have an opportunity, but we just -- the way the
24 system works is Mr. Bogle has first opportunity and he
25 gets to ask all his questions, and then Mr. Brooks has

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1 his, and then when we get further along in the case, when
2 it's time that Mr. Brooks calls his witness or your first
3 witness, he will then examine that witness completely
4 before Mr. Bogle having a chance. That's how it works.
5 So he knows what he's doing. He's -- and thus far, there
6 hasn't been any -- I understand your concern about talking
7 about charges that were dismissed and all of that, but --
8 but that is allowable under the statute and Mr. Brooks has
9 not objected because he knows that it is allowable, so if
10 he -- if he were to object, more than likely I would just
11 overrule his objection and allow the testimony in. So
12 he's aware of what's going on. He's got his mind on it.

13 Mr. Whitlock - Yes, sir. Thank you.

14 The Court - All right, sir. All right. Let's
15 bring the jury back in.

16 (Jury returns to the courtroom)

17 The Court - All right, thank you, ladies and
18 gentlemen. Appreciate your accommodating the Court. We
19 will pick up with Mr. Bogle's direct examination. Mr.
20 Bogle?

21 Mr. Bogle - Thank you, Your Honor. May it
22 please the Court.

23 Q Doctor, let me back up a second right now. Looking
24 at the documents you have right there and the information
25 you gave the jury about these crimes, what was it about

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1 these sexual crimes, the ones he's convicted of, the ones
2 he wasn't, was it about those that caught your attention
3 and were significant to you in your evaluation of Mr.
4 Whitlock?

5 A The use of violence.

6 Q Okay. Was that present in all of them?

7 A Yes.

8 Q To some degree or another?

9 A Yes, to some degree or another, yes.

10 Q And why is the use of violence so significant to you
11 in making this type of evaluation?

12 A Well, again, when we're trying to predict who's going
13 to re-offend, it's a very complicated -- sexual re-
14 offenses are very complicated, a lot -- there's a lot of
15 factors that go into it and it's studied very heavily,
16 particularly among -- among psychologist and psychiatrist
17 and they've looked for what types of things predict future
18 re-offense, so what can you look at that will help guide
19 you to know down the road who is likely to re-offend and
20 who's not. And there are two things that come up over and
21 over again, both in adolescence and adults, and they are
22 defiant sexual interest, that is, defiant sexual interest,
23 (sic) and anti-social tendencies, violence. In other
24 words, anti-social is being defined by people who are not
25 very empathetic and people who are willing to inflict harm

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1 in order to get what they want. And those two factors
2 more often, more frequently come up over and over again in
3 studies that give us concern that somebody will re-offend
4 again.

5 Q Now, doctor, going over, was it also necessary for
6 you to explore Mr. Whitlock's family history and history
7 of other places he's lived beside his home?

8 A It was. Mr. --

9 Q For these -- Go ahead.

10 A Mr. -- I'm sorry. Mr. Whitlock was removed from the
11 home at I guess about age eleven roughly. He had trouble
12 in school, had trouble with -- some trouble with
13 discipline, was placed into foster homes for a period,
14 spent some time in the Rock Hill Boys' Home. Actually
15 upon returning home after that is when all of the offenses
16 occurred, and he honestly was incarcerated shortly not too
17 long after that and has basically been in supervised
18 situations since that time.

19 Q Was there any mental condition or injury to Mr.
20 Whitlock that was mentioned in the files, any serious
21 physical injury to him that was mentioned in the files?

22 A He at about age ten was -- was riding his bicycle and
23 was struck by a car, spent three days in the hospital. He
24 had a negative CAT Scan. No damage was ever identified,
25 but he did have that -- that significant injury.

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1 Q Now, as a medical doctor, as a psychiatrist, but also
2 a medical doctor, was there anything significant about
3 that head injury as relating to his future sexual
4 offending behavior?

5 A Not -- no, there was no direct link that I'm aware
6 of.

7 Q Okay. Now, doctor, in addition to examining the
8 crimes, things like that we've talked about so far, did
9 you perform any assessments or testing, if you will, of
10 Mr. Whitlock?

11 A Well, we did a number of things. We repeated a
12 simple -- call it an instrument. All that really means is
13 it's sort of a statistical test, that actually -- that Dr.
14 Musick had done earlier called the Static 99, and that's
15 just a matter of going through his chart and looking up
16 some historical factors that guide us in predicting future
17 behaviors. We started with that. But beyond that, Dr.
18 Dwyer who runs the lab did a fairly extensive set of
19 tests.

20 Q Well, let's start with the Static 99. Is it called
21 the Static 99-R for revised?

22 A It is called the Static 99, it is.

23 Q Can you tell the jury exactly what that is and give
24 us an analogy how it's supposed to work?

25 A A Static 99 is an assessment of -- of risk factors.

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1 In other words, again, they take -- they take huge
2 populations of people who've re-offended and then they've
3 retrospectively gone back and said, well, what kind of
4 things do we find that correlate with re-offense, and they
5 did this with huge numbers of people and these are just --
6 these are just giant population studies, and they came up
7 with a list of twelve historical factors that seemed to
8 correlate with re-offense, repeatedly and reproducibly and
9 those ten factors are called -- are called the Static 99.
10 It comes out of a studies done all over North America,
11 actually came out of Canada, but it's been normed in both
12 Canada and the United States.

13 Q Now, the revised version, doesn't it also include
14 offenders from other countries?

15 A It does.

16 Q Many more offenders.

17 A Many more offenders.

18 Q Okay. How did you -- can you -- can you give us an
19 example of something we might encounter in our personal
20 lives that would relate -- that is similar to the
21 rationale used in something like the Static 99-Revised?

22 A It -- it -- I guess the best analogy I can use is
23 that if you walk into your doctor and you say to your
24 doctor, goodness, do I have a risk of having a heart
25 attack. So the doctor takes a look at you and he says,

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1 well, has anybody else in your family had a heart attack,
2 and you tell him yes or no, and he says, well, do you have
3 hypertension, and you say yes or no, and he checks your
4 lipids and you look at your cholesterol level, and he
5 takes a look at that, and he looks at how much you weigh
6 and how much exercise you get, and he looks at all of
7 these difference factors that when summed up can provide
8 you with a reasonable way to assess your risk of having a
9 heart attack down the road. Doesn't mean you're going to
10 have a heart attack, just because you've got hypertension,
11 family history, don't exercise, cholesterol's high; all of
12 those things could be true and you could live to be a
13 hundred, but if you look at all of those factors and you
14 add them all up, he's going to be more likely to make you
15 try to lose weight, take something for your lipids. He's
16 going to try to treat that, because he knows that that
17 list of risk factors over time correlates with people who
18 are more prone to have heart attacks.

19 Q Now, going -- so using the Static 99, does it measure
20 certain static factors, certain unchangeable factors about
21 an individual such as Mr. Whitlock?

22 A Yes, it looks at what we call historical factors.
23 That is, you can you get them out of a record. You can --
24 the idea of that is that it's relatively reproducible,
25 that you can do it on large numbers of people and that

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1 it's -- that it's got -- it's got good -- it a -- if you
2 get three people to do it, they'll probably agree on the
3 score. And it just goes back and it looks at certain risk
4 factors that those people have and assesses them and comes
5 up with a score and a relative risk.

6 Q Now, is an example, what risk factors -- well, what
7 was the ultimate score that Mr. Whitlock got on this
8 instrument, the Static 99-Revised?

9 A Mr. Whitlock has a nine.

10 Q Okay. And how does that rate in probability or in
11 risk to re-offend?

12 A In general terms a one or a two are considered pretty
13 low, and a three and a four are considered sort of a
14 medium to getting up to high and five and six are
15 considered high. Six is pretty clearly considered high.

16 Q He got a nine?

17 A And he got a nine.

18 Q Okay. So how does that -- did you feel that that
19 instrument accurately assessed Mr. Whitlock's chance of
20 re-offending sexually?

21 A Well, again, Static 99s -- it's just -- it's one
22 assessment tool, and all it does is look at historical
23 factors. It's one tool that you would use, but it doesn't
24 even really look at how the person is today, because it's
25 looking at his history. It's looking back over the things

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1 that he's done in the past, and so you also then have to
2 look at, well, where is he today, has he changed his life
3 in such a way that all of those historical factors really
4 are not so meaningful anymore, or has he not.

5 Q Okay. Is this -- now, is the Static 99-R something
6 you did rely upon in your opinion ---

7 A Yes.

8 Q -- about Mr. Whitlock? Okay. But you mentioned
9 other factors, other tests, other instruments to look at
10 as well. There's something called the SASSI-III. What is
11 that? Was that an assessment that was done on Mr.
12 Whitlock?

13 A It is. That's a -- it's called the -- they call it
14 the substance abuse subtle screening inventory.

15 Q Well, what's the purpose of that and what'd you learn
16 from it?

17 A We know that substance abuse is associated with
18 sexual re-offense, not so much because it causes it, but
19 because it sort of drops inhibitions and that people who
20 are chronic -- have chronic trouble with drugs and alcohol
21 are at somewhat higher a risk of re-offense. In this case
22 you're looking at -- you're comparing him to two
23 populations, one of people with no history of substance
24 problems and people with a history of substance problems.
25 Now saying that, Mr. Whitlock has no history of problems

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1 with drugs or alcohol or no significant history that I'm
2 aware of. However, when you say, is he more like people
3 who get into trouble with drugs and alcohol or is he more
4 like people who don't, you come to the conclusion that
5 he's more like people who do.

6 Q Okay. There's another assessment called the Connors
7 Continuance Performance Test. What was that done and what
8 significance did it have to you?

9 A A Connors is actually usually done for people with
10 Attention Deficit Disorder. It's a measure of difficulty
11 maintaining attention or it's kind of a -- it's used sort
12 of loosely as a measure of impulsiveness, and it -- again,
13 it measures of populations. It takes a people -- a group
14 of people who clearly have impulse and attention problems
15 and it takes a population of people who don't and it says
16 are you more like the people who don't have any problems
17 or are you more like the people who do.

18 Q And where did he fit in?

19 A He's -- he's a little bit closer to the people who do
20 have problems but not dramatically so. He's about sixty-
21 three percent, so that he's not clearly in either camp
22 but a little bit more toward the people who have some
23 trouble with impulsiveness.

24 Q What other assessments did you use that figured into
25 your opinion about Mr. Whitlock?

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1 A We did a simple personality test called a PAI,
2 personal assessment inventory. It's an evaluation of
3 people's coping skills and strengths and mental illnesses
4 and those kinds of things, a personality test.

5 Q Okay. Anything else?

6 A And then lastly we did a -- well, we tried -- we went
7 to do another test called an ABLE. It's abbreviated the
8 ASSI. It's an able assessment of sexual interest, but Mr.
9 Whitlock said that he was not able to participate in that
10 evaluation, because he said he didn't have his glasses.

11 Q Okay. Now, is there something called the PPG that
12 you also administered to Mr. Whitlock?

13 A We did. We also did a PPG.

14 Q Okay, and what does that stand for?

15 A A PPG is a penile plethysmograph.

16 Q Okay. Now, is this a test of a diagnostic thing
17 that's used by members of your profession, particularly in
18 the context of these types of evaluations, sexually
19 violent predator evaluations?

20 A It is.

21 Q Okay. Basically, how does it work?

22 A Basically it -- it's most akin to sort of a lie
23 detector in that it measures respirations and pulse, but
24 it adds to that and puts a little loop around your penis
25 and it measures arousal basically.

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1 Q What is the person shown to determine whether or not
2 they're aroused?

3 A Then the person is shown -- there's two sets
4 actually. The first set is mostly just voices, and you
5 listen to a scenario. They tell you a story. And those
6 stories involve either children, teenagers or adults and
7 those stories involve either consensual sex or coercive
8 sex or all kinds of different scenarios that vary by age
9 group, gender and degree of consensual versus coercive.
10 You then repeat -- you then repeat the whole thing using
11 a visual set where not only does it include some voices
12 but also that there's a visual component to it.

13 Q Okay. What were the results of this assessment or
14 this examination of Mr. Whitlock? Were there any results
15 of that that you found significant?

16 A The -- when -- he only participated in the part I,
17 the first part. And basically it showed interest in both
18 males and females. There was some interest in coercion
19 with pre-pubescent kids, pre-pubescent coercion of kids,
20 non-sexual violence toward pre-pubescent males, also
21 consenting males, passive pubescent males and consenting
22 adult females.

23 Q Now, by pre-pubescent, just so we make a record here,
24 when you say pre-pubescent, male or female, what you
25 referring to as far as the age development of that person?

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1 A That's an age -- that means that they have not
2 sexually developed. They have not reached -- usually the
3 age of about thirteen, bottom line.

4 Q Okay.

5 A They're younger than thirteen.

6 Q Was there any interference with the administration of
7 this test done by Mr. Whitlock that caused you --
8 presented a problem?

9 A Well, the person who did the test made a number of
10 notes about the fact that he was moving around a lot,
11 pulling on the wires. They had to kind of tell him to
12 stop doing that any number of times. It -- after the test
13 had been done, they kind of said something to him about
14 it, and he noted that he spontaneously said I'm not --
15 that he wasn't moving around, I think I'm just being
16 defiant, under pressure or something.

17 Q Okay. Now, was there any other written information
18 or written reports that you looked at and relied upon in
19 rendering your opinion about Mr. Whitlock?

20 A Of course all of his old psychiatric records, all of
21 his old evaluations from when he was young, but most
22 importantly I think was Dr. Musick's evaluation. He was
23 doing the same thing I was doing and he'd done it six
24 months or so earlier, so of course that one would be the
25 most relevant.

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1 Q Was Dr. Musick's evaluation also part of your -- the
2 basis for your opinion?

3 A It was.

4 Q And why was it important for you to look at that
5 evaluation?

6 A Well, because he came to a different opinion than I
7 did.

8 Q Okay. We'll get back to that in just second then.
9 Let me ask you this. What are risk factors ---

10 A Risk fact ---

11 Q -- in this context?

12 A Risk factors are -- are things that you can look at
13 that will give you a guide to what will happen in the
14 future. In my story about heart attacks, hypertension is
15 a risk factor; family history is a risk factor; not
16 exercising is a risk factor; high cholesterol is a risk
17 factor. Those are all risk factors. Some of those risk
18 factors there's nothing you can do about it. You've got
19 family -- those are called historical or static, static
20 risk factors. There's nothing you can do about it. You
21 were born that way. Your mom and dad -- that's just the
22 way it was. You can't change them. Those are historical
23 risk factors. But then there are what are called dynamic
24 risk factors, and dynamic risk factors are things you can
25 change. That's like how much you weigh, what kind of --

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1 how much cholesterol you eat. Those are dynamic --
2 because you can change those. You can alter them. And so
3 when we look -- when we look, try to say whether
4 somebody's going to re-offend, we go through a similar
5 kind of analysis. They've got risk factors that are
6 historical that they can't change, things they've done,
7 but they have dynamic risk factors which are things that
8 they can change and modify, and those are important to us
9 also.

10 Q Okay. What risk factors does O'Bryan Whitlock have?

11 A Well, historically -- and you can just go through the
12 Static 99. The Static 99 particularly is pretty heavily
13 weighted for violence, and the more violent acts you
14 accumulate, the higher your score goes. It looks at age.
15 It's an unfortunate fact that young men are at higher risk
16 than -- somewhat higher risk of re-offense than older men
17 -- looks at the number of times you've been charged with
18 certain types of offenses, particularly violent ones or
19 sexual ones, they accumulate. It looks at your victims.
20 If you tend to -- they know that the risk of re-offense is
21 higher when you pick out strangers. They know that the
22 risk of re-offense is when you pick out males. Those
23 kinds of things cumulate into a higher static or
24 historical risk.

25 Q And are these the risk factors that Mr. Whitlock has?

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1 A Yes.

2 Q Okay. Was there anything about his confinement at
3 places like Birchwood, Avalonia things like that, any
4 comments that he made to people that you read in those
5 records that you --

6 A Oh, goodness. Just relating to history?

7 Q If you could, please.

8 A The ---

9 Q The stuff that you found significant in developing
10 your opinion about Mr. Whitlock?

11 A Oh, okay. Yes. So knowing those things, you -- so
12 knowing that he's got that historically high risk, you
13 then look and say, well, hum, he's -- when they tried to
14 treat him, how did it go, how did things go for him. And
15 the good news is you've got close to six or seven years to
16 look at. Because when he -- after he was incarcerated --
17 based on the index charges -- he really -- was immediately
18 went to DJJ and they started to treat him actually. He
19 got transferred to a group home where he got less or no
20 treatment, but he had trouble at the group home.
21 Unfortunately he was defiant. The records indicate that
22 he was defiant. There were fights. There was trouble
23 with authority figures, the people that worked there.
24 And, in fact, in 2005 in July he ran away, couple weeks
25 later they found him and they brought him back. But then

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1 a couple of months later he ran away again and in the
2 process of running away from Avalonia he choked out a
3 staff member, choked her into unconsciousness while he was
4 running away. He picked up another charge on that and I
5 think -- picked up another charge and was transferred back
6 to a more secure facility, back to the Birchwood facility.
7 The importance of that is that he went back into treatment
8 again, so they put him in the sexual treatment program
9 there at DJJ. When you go through the records looking at
10 how he was doing, it was not very good, again, defiant,
11 not accepting responsibilities for the crimes, blaming it
12 on people trying to gang up and being unfair to him. His
13 behaviors were so problematic that he had to be pulled out
14 of sexual offender treatment twice and put in what's
15 called the STAR program. It's an anger management program
16 at DJJ. So twice he went through STAR and then back into
17 the sexual offender program, but at the end of it, though
18 he -- he stayed in until the end -- he was in -- he was
19 getting into so much trouble, he caught so many charges
20 that he ended up in lock-up, seclusion, segregation, so
21 much that all of his treatment during those latter years
22 had to been done through a cell door for usually about an
23 hour a week and the -- there's notes in the chart that
24 indicate that it really wasn't -- they didn't feel that it
25 was very effective. I also called the gentlemen who ran

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1 the program and though his memory is a little -- honestly
2 was a little fuzzy, he had some memory and remembers that
3 -- during that last period of time what kind of trouble
4 they had trying to do any kind of therapy effectively in
5 somebody who's segregated in lock-up.

6 Q Was there any type of aggressiveness or acting out
7 towards females that was noted in these records while he
8 was at these places?

9 A Off times there's -- certainly there's the choking of
10 the female staff member but also just routinely acting
11 out. They didn't break them down. In DJJ I don't think
12 they broke them down and detailed them, but there were any
13 number of infractions and he's -- he was in -- he was in
14 isola -- segregation for the vast majority of the last two
15 years of his period in DJJ.

16 Q What type of sexual misconduct was observed when he
17 was in the lock-up or in these institutions? What'd he
18 do?

19 A There were repeated episodes of exhibitionism,
20 usually public masturbation in front of usually female
21 COs.

22 Q Okay. Now, at some point in time did he get
23 transferred from the Department of Juvenile Justice to the
24 Department of Corrections?

25 A He did. He went to Turbeville, I believe.

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1 Q Did you have occasion to review any disciplinary
2 records he might've had while he was confined at the South
3 Carolina Department of Corrections, and if so, what did
4 you find --

5 A Let me --

6 Q -- that was significant?

7 A -- make sure I get it right. Um, he had -- he
8 remembers being charged about three hundred -- he said
9 about three hundred times, but actually I think the
10 records indicated he was only charge -- here we go -- he
11 was charged eighty times. This is in SCDC, so this would
12 be after he was transferred to Turbeville.

13 Q So he's not at the Department of Corrections ---

14 A This is Department of Corrections.

15 Q Not at Juvenile Justice. He's at the Department of
16 Corrections. Go ahead.

17 A Right. SC -- and this is from the period October 26,
18 2007 to January 2011 in SCDC. He had eighty charges,
19 twenty-nine convictions, twelve of these were for
20 exhibitionism or sexual misconduct.

21 Q And what type of sexual misconduct are we talking
22 about?

23 A Well, it doesn't really break it down. They separate
24 it from exhibitionism, but -- and they -- the little note,
25 the little -- they just give you a little -- usually a

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1 one-liner to describe what it is, and so I -- they don't
2 usually say, but at least -- at least a number of them
3 there are multiple illusions to public masturbation, the
4 exhibitionism charge.

5 Q Now, after finishing his time at the Department of
6 Corrections, was he transferred to the jail here in York
7 County pending this trial?

8 A Correct.

9 Q Were there any disciplinary issues while at the jail
10 here right behind me here in this center that also were
11 significant to you that you looked at?

12 A Yes.

13 Q Would you please explain those to the jury and tell
14 us why these are significant here?

15 A Again you're looking at is it going away, is it
16 getting better, evaluating dynamic risk factors, and Mr.
17 Whitlock was transferred here to the jail on October 19th,
18 2011. There are -- there's a list of disciplinary actions
19 from October 8th, 2011 to January 12th, 2012, so over two
20 months. There are two charges for sexual harassment, one
21 for possession of contraband, one for habitual offender,
22 refusal to obey, a refusal to obey oral directives and
23 four episodes of being placed on suicide watch. Two of
24 these are described -- two of the sexual offenses are
25 described. One of them was flicking his tongue and

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1 licking his lips at one of the officers, one of the female
2 officers and the other was asking an officer to come to
3 his door when he was -- when he was masturbating.

4 Q Now, doctor, what is the significance of his conduct
5 while he's confined? I mean you consider it in the
6 context of what will happen if he gets out in the public.
7 Why is this significant when it's happening in a
8 confinement, in a jail or prison or the Department of
9 Juvenile Justice?

10 A Well, we know he comes in with a historically high
11 risk and so you look to see again reassessing dynamic risk
12 factors, how is he today, and unfortunately what you see
13 is a long line of sexual misconduct charges. You see --
14 and it -- you know, failure to be able to control one's
15 impulses and you see it over and over and over again,
16 multiple charges going on until at least January of this
17 year. It -- we would interpret that as difficulty
18 controlling impulse, not being able to stop. And what's
19 more -- though it's -- I mean exhibitionism is not -- no
20 one is directly physically harmed, but yet it brings an
21 unwilling participant. It's -- you know -- as -- as one
22 of his reviewers noted, they don't think he's really doing
23 it for sex -- so much for sexual gratification, as for
24 revenge. He's angry, but that's of concern. In other
25 words, when he gets angry he drags them into sexually

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1 acting out, his own sexual needs. I find that sort of
2 persistently concerning and it suggest that all of the
3 offender treatment that he had at Birchwood really was not
4 terribly effective.

5 Q Now, doctor, these risk factors you talk about and
6 all the conduct you talk about while he was incarcerated,
7 were these things part of the basis of your opinion?

8 A They were.

9 Q Now, doctor, based upon your examination of Mr.
10 Whitlock, the assessments that were run by you and by the
11 other doctor at your office, the review of this records,
12 all the factors we've been talking about today, do you
13 have an opinion to a reasonable degree of medical
14 certainty as to whether or not Mr. Whitlock has a mental
15 abnormality or a personality disorder?

16 A I do.

17 Q And what is that?

18 A He does.

19 Q What does the -- which one does he have and what is
20 it called?

21 A He has a mental abnormality called anti-social
22 personality disorder. That's an established diagnosis in
23 psychiatry. It's got specific criteria that he meets that
24 has to do with not respecting -- to put it most simply --
25 not respecting the rights of others. People with anti-

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1 social personality tend to break laws repeatedly, over and
2 over and over again. They con. They're deceitful. They
3 steal other people's things often times. They break laws.
4 They lie. They have a hard time holding jobs. They
5 aren't very responsible. They don't pay off debts. They -
6 - and most importantly, they have poor empathy. They just
7 are not empathic to how others -- how their actions affect
8 the lives of other people.

9 Q Is this a life-long condition?

10 A It is.

11 Q Can it be treated?

12 A It can be treated. It is difficult to treat. It's
13 best treated with -- if one accepts that there is an issue
14 -- but it's very -- it is hard to treat, but it can be
15 treated.

16 Q Was there anything about Mr. Whitlock that led you to
17 conclude that he accepts he's got a problem?

18 A No.

19 Q Doctor, do you have an opinion again to a reasonable
20 degree of medical certainty as to whether or not this
21 anti-social personality disorder that he suffers from
22 affects his emotional or volitional capacity so that he is
23 predisposed to commit sexually violent offenses in the
24 future?

25 A Yes, I think based on the anti -- the fact that he

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1 has anti-social personality disorder he is predisposed to
2 commit future sexual offenses.

3 Q Okay. Why do you believe that? What's the basis for
4 that? Is there something we haven't covered or why do you
5 believe that in general?

6 A Mostly for the reasons that I've talked about,
7 because when I look at what he's done in the past, I see
8 a high risk, and so I look to see if in some way that that
9 has been modified by what's going on today, and I don't
10 see any evidence that it has. It's still -- the same
11 kinds of behaviors are still on-going, and so I have to
12 conclude that they will continue to go on in the future
13 unless something comes along to treat the underlying
14 disorder.

15 Q And the treatment -- has he received such treatment
16 to date?

17 A He received some sex offender treatment at Birchwood.

18 Q Right. Well, was it effective in your opinion?

19 A I don't believe that it was effective.

20 Q Do you have an opinion, doctor, again, to a
21 reasonable degree of medical certainty as to whether Mr.
22 Whitlock has the propensity to be dangerous and commit
23 future sexually violent offenses?

24 A I do believe that Mr. Whitlock has the propensity to
25 be dangerous and commit future sexually violent offenses.

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1 Q Do you have an opinion again to a reasonable degree
2 of medical certainty as to whether his propensity to
3 commit future sexually violent offenses is of such that
4 poses a menace to the health and safety of others?

5 A I do believe it poses such a risk.

6 Q Okay. Does he have serious difficulty -- again, to
7 a reasonable degree of medical certainty, does he have
8 serious difficulty in controlling his behavior?

9 A Yes, he does.

10 Q And do you believe that his issues, his lack of
11 ability to control his behavior, again to a reasonable
12 degree of medical certainty, is it of such a degree that
13 he needs to be confined in a secure facility for long-term
14 control, care and treatment?

15 A I do.

16 Q Do you have an opinion again to a reasonable degree
17 of medical certainty as to whether or not Mr. Whitlock
18 meets the legal criteria to be found a sexually violent
19 predator?

20 A I believe he does.

21 Q Now, with regard to Dr. Musick's evaluation, did he
22 also render a diagnosis of Mr. Whitlock?

23 A He did.

24 Q And what was his diagnosis?

25 A Anti-social personality disorder.

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1 Q Do you know how -- well, let me ask you this. What
2 was Dr. Musick's opinion as to whether or not he felt or
3 he believed that Mr. Whitlock was a sexual violent
4 predator?

5 A He did not believe that Mr. Whitlock's behaviors were
6 to such a degree or that his risk of a future offense was
7 so severe that he needed to be committed for long-term
8 treatment?

9 Q Okay. Now, it's clear that you disagree. Would you
10 please state the basis of your disagreement?

11 A The -- the main argument, as I perceived it, is that
12 -- that when Mr. Whitlock committed these crimes, he was
13 a juvenile. He was. He was quite young, twelve, thirteen
14 years old. He was quite young. And there is literature
15 to indicate that juveniles have a lower re-offense rate,
16 particularly when they're treated. To treat juveniles as
17 -- their re-offense rates are relatively low. The numbers
18 almost often thrown around are between about five to
19 fifteen to twenty percent, somewhere in there, five to
20 fifteen percent, and that's -- that's low. But that's --
21 looking in general at all juvenile offenders and when you
22 look at juvenile offenders there are subsets of people
23 that are higher risk than others and when they've done
24 that, what you find is that people that are violent and
25 have deviant sexual interest are among those juvenile

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1 defenders that most likely to re-offend, and so I don't --
2 I -- just to say that he was young when he did it and
3 juvenile offenders don't tend to re-offend, I don't know
4 is an applicable argument or a strong argument in this
5 case.

6 Q Now, doctor, if the jury finds Mr. Whitlock to be a
7 sexually violent predator, would he be offered treatment
8 for his personality disorder?

9 A Yes.

10 Q Who offers the treatment?

11 A The Department of Mental Health.

12 Q And would it be a secure location where he would go
13 to?

14 A Yes.

15 Q Okay. Would he have the right to petition the Court
16 for release after he was committed?

17 A I think every year.

18 Q Okay. And to your knowledge has he completed his
19 sentence, his criminal sentence for these charges?

20 A Yes.

21 Q Is he facing any probation that you know of?

22 A No.

23 Q Okay. So is there anything you know of that if he
24 was released that would require him to take the sex
25 offender treatment?

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1 A There's nothing that I'm aware of.

2 Q Okay. Do you have any program that can guarantee sex
3 offender treatment other than this commitment process
4 we're doing today?

5 A No, sir.

6 Q Who would be at risk, doctor, if Mr. Whitlock was
7 released into the community?

8 A The public would be at risk.

9 Mr. Bogle - Okay. Thank you. Please answer any
10 questions that counsel may have or the Judge may have.

11 The Court - Mr. Brooks.

12 Mr. Brooks - Judge, may we approach?

13 The Court - Yes, sir.

14 (Bench conference was held in the presence of
15 the jury but out of the hearing of the jury which was not
16 reported.)

17 The Court - Ladies and gentlemen, I was just
18 going over with the attorneys our schedule. We're getting
19 close to 5:00 o'clock and although we don't necessarily
20 have to stop right at 5:00, I try to. I try to keep you -
21 - the jury on what we call typical business hours if we
22 can do that. So what we're going to do is we're going to
23 recess at this time, and we'll start back in the morning.
24 Now, things for you change a little bit, because you're
25 about to leave and go home and obviously you'll have

1 family, friends, loved ones and they're going to be
2 curious as to what your day's been like and what type of
3 case you're involved in. It is okay to tell them that you
4 are a member of a jury, you are sitting on a case, but
5 that's -- that's as far as it can go. Now they are going
6 to -- obviously going to be curious as to what kind of
7 case is it and who does it involve or what does it
8 involve, and that's where you're going to have to stand
9 strong and just say, listen, I'm not trying to be
10 secretive, not trying to be anything evasive, but the
11 Judge has ordered that we're not allowed to discuss this
12 case at all, not even to tell you what type of case it is.
13 You can just let them know that it's a civil case and that
14 you are on the jury and that's all you can tell them. You
15 can let them know, however, that when the case is over
16 that you'll tell them all they want to know about it,
17 you'll tell them everything if they're interested, but
18 until that time it's very important that they respect your
19 order to not talk about the case. So please share that
20 with them, don't allow any of them to talk with you about
21 the case. As I told you earlier I usually tell folks, go
22 home and enjoy your evening, put this out of your mind for
23 a while. You'll come back tomorrow and we'll pick up here
24 tomorrow right where we've left off. So just enjoy your
25 evening. Try to get a good night's rest if you can. As

1 you may have been able to determine from this afternoon's
2 session, jury service is not physically taxing from a
3 muscular standpoint, but it can be from a mental
4 standpoint, so try to be well rested when you come back
5 tomorrow so that you'll be in a good position to listen to
6 the testimony and absorb everything that's being said.
7 I'm going to ask you if you would to be back in the jury
8 room ready to go at 9:30 in the morning. Okay? So if you
9 can -- if you can do this thing -- I don't know how y'all
10 are. We have this never-ending battle in my home -- my
11 wife is one of the most wonderful women I've ever met in
12 my life, but she has this thing, if we have to be
13 somewhere across town at 7:00 o'clock, she thinks we're on
14 time if we leave the house at 7:00 o'clock. I try to
15 convince her that that's not necessarily the case, but if
16 you need to be here at 9:30 in the morning, which I'm
17 asking you to be, plan on however far you live from the
18 courthouse and getting here and parking and getting in the
19 courthouse, allot for that time so that when 9:30 comes
20 we've got all the members of the jury present and we can
21 go ahead and start. Okay? Please try to do that if you
22 can, and we'll start once we have everybody reconvened.
23 All right? I'm going to get you to follow the bailiff
24 back to the jury room if you have anything in there you
25 need to get before you leave and then you're excused from

1 there and we'll see you back here tomorrow at 9:30.
2 Everyone else remain in the courtroom while the jury is
3 excused.

4 (Jury exits the courtroom)

5 The Court - All right, we'll recess at this
6 time. Dr. Mulbry, obviously, if you'll have no
7 conversation about your testimony with anyone between now
8 and when you resume --

9 Dr. Mulbry - Yes, sir.

10 The Court - -- the stand tomorrow. Is there
11 anything we need to take up now before we adjourn for the
12 afternoon?

13 Mr. Bogle - Not that I'm aware of, Judge.

14 Mr. Brooks - Judge, I may call on you take care
15 of the Judge in Darlington County for me tomorrow. I got
16 a PCR.

17 The Court - We can take care of that. Who's
18 over there?

19 Mr. Brooks - I don't know who the Judge is ---

20 The Court - I'll find out.

21 Mr. Brook - -- but I know -- I'm sure Judge
22 Russo can --

23 The Court - We'll work it out.

24 (Discussion is held between the Court and the
25 parties involved in the next case which is not reported.)

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1 The Court - All right, if there's nothing
2 further, we'll then be in recess until 9:30 in the
3 morning.

4 Mr. Bogle - Thank you, Your Honor.

5 (Court in recess at 5:00 p.m.)

6 * * * * *

7 (Court resumes at 9:45 a.m. Tuesday, May 15th,
8 2012)

9 The Court - Thank y'all, please have a seat. I
10 apologize to everybody for running late this morning. I
11 didn't do a good job estimating my time.

12 Mr. Bogle - Judge, --

13 The Court - Yes, sir.

14 Mr. Bogle - -- need a favor.

15 The Court - Yes, sir.

16 Mr. Bogle - Dr. Mulbry's office evaluates guys.
17 He's got one guy that's being transported from the
18 Florence jail to Charleston today to be seen. Well, since
19 Dr. Mulbry's here and not in Charleston, we need to cancel
20 that. Can he go out in the hall and make a phone call --

21 The Court - Yes.

22 Mr. Bogle - -- to try and call that office?

23 The Court - Absolutely. Absolutely.

24 Mr. Bogle - Thank you.

25 (Brief pause)

1 Mr. Bogle - Thank you, Your Honor.

2 The Court - Yes, sir. (Pause) All right,
3 anything we need to take up before we begin?

4 Mr. Bogle - No, Your Honor. I think we left
5 off, I had finished my direct examination of Dr. Mulbry
6 and we would just turn him over to cross examination by
7 counsel or any questions by Your Honor.

8 The Court - All right. Mr. Brooks, anything we
9 need to take up before we proceed with your cross?

10 Mr. Brooks - Ready to go, Judge.

11 The Court - All right. Dr. Mulbry, if you don't
12 mind, come back onto the stand and we'll get the jury
13 ready to be brought in.

14 (Dr. Mulbry re-takes the stand)

15 The Court - All right, bring the jury in,
16 please.

17 (Jury returns to the courtroom)

18 The Court - Good morning, ladies and gentlemen.
19 Hope everyone had a good evening and well rested and ready
20 to go to work. If you recall when we ended Court
21 yesterday afternoon, we had just finished the State's
22 direct examination of Dr. Mulbry, and we were going to
23 recognize Mr. Brooks for his cross examination and that's
24 when we had the conference to determine that it was
25 probably really a good breaking time because of the late

Leonard William Mulbry, Jr. - Cross by Mr. Brooks 93

1 hour, so we're going to pick up right where we left off,
2 and I'm going to recognize Mr. Brooks for his cross
3 examination, and Dr. Mulbry, if you would just consider
4 the fact that you are still under oath, sir.

5 Dr. Mulbry - Yes, sir.

6 The Court - Thank you. Mr. Brooks?

7 Dr. Leonard William Mulbry, Jr., after having
8 previously been sworn, testifies as follows:

9 Cross Examination

10 by Mr. Brooks -

11 Q Dr. Mulbry, --

12 A Yes, sir.

13 Q -- how you doing today?

14 A Good morning.

15 Q Good. Did you talk to anybody specifically about
16 your testimony?

17 A I have not.

18 Q Okay. Now, as indicated through your direct
19 examination of Mr. Bogle, you had the opportunity to
20 evaluate Mr. Whitlock. Is that correct?

21 A Yes, sir.

22 Q And basically as -- you went through an entire
23 history of Mr. Whitlock. Is that correct?

24 A Yes, sir.

25 Q Now, some of those things were convictions that you

Leonard William Mulbry, Jr. - Cross by Mr. Brooks

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1 mentioned, --

2 A Yes, sir.

3 Q -- some of those things were actually incidents but
4 ultimately got dismissed. Is that correct?

5 A That is correct.

6 Q Okay. So just to be clear, not all of those things
7 that you raised as far as his history as a juvenile, the
8 criminal sexual conduct cases were actually convictions.

9 A Not all of them, correct.

10 Q And that there were things that actually had gotten
11 dismissed.

12 A Yes, sir.

13 Q Okay. You don't necessarily know why they got
14 dismissed.

15 A No, sir.

16 Q And the fact that they got dismissed, it could
17 possibly mean that he didn't necessarily do that. Is that
18 correct?

19 A I don't know why they were dismissed. Correct.

20 Q Okay. But it's -- I mean you would agree with me
21 that it's possible that the mere fact that it was
22 dismissed means that it could've possibly not occurred.

23 A Possibly.

24 Q Okay. All right. Now, one of the things you had
25 also talked about is that you had worked on twenty people

Leonard William Mulbry, Jr. - Cross by Mr. Brooks 95

1 under this statute. I mean you evaluated twenty people
2 under this SVP Act. I say SVP -- Sexual Violent Predator
3 Act.

4 A Yes, sir.

5 Q Okay, if I say SVP, I mean that -- and I'm sure you
6 know what I'm referring to. Is that correct?

7 A I do.

8 Q Okay. And that's the total number of people that you
9 have evaluated?

10 A No. That's the total number of people that I have
11 evaluated specifically for the SVP Program.

12 Q Okay.

13 A I've evaluated people for similar things in many,
14 many other cases, either hired by defense, hired by
15 Federal Courts, usually for the defense; I've been hired
16 by various licensing agencies to do similar evaluations
17 when professional -- there's a question about professional
18 conduct, so that's the total number that I have done
19 specifically at the request of the Attorney General's
20 Office for evaluation of people to go into the -- into the
21 civil commitment program.

22 Q Okay. And so -- and I want to make sure I get a
23 clear understanding -- when you say twenty, does that mean
24 you said I think twenty people overall that I evaluated
25 need to go into the program, or is that I've evaluated

Leonard William Mulbry, Jr. - Cross by Mr. Brooks 96

1 twenty people and out of that twenty a certain number I
2 recommend to go into the program?

3 A Of evaluated twenty people, a little over half I
4 recommended that they not go in the program.

5 Q Okay. Now, you indicated that you talked to Mr.
6 Whitlock for about five hours. Is that correct?

7 A Yes, sir.

8 Q And it was a total of five hours.

9 A Yes.

10 Q And it was on two occasions.

11 A Yes.

12 Q Okay. And those occasions were actually in your
13 office in Charleston?

14 A Yes.

15 Q So he was transported down there for you to meet with
16 him.

17 A (Indicating yes)

18 Q Okay. And as a part of this you had indicated in
19 your testimony that you look at the past in order to sort
20 of get an idea of the future. Is that right?

21 A Yes.

22 Q Okay. But now that's not necessarily a guarantee, is
23 it?

24 A No.

25 Q All right. It's not like, you know, this particular

Leonard William Mulbry, Jr. - Cross by Mr. Brooks 97

1 method that you used to evaluate him is a guaranteed
2 crystal ball to say a person, in this case Mr. Whitlock,
3 will do x and y if he gets out. Is that correct?

4 A That's correct.

5 Q Okay. And what I mean by that, there's no guarantee.

6 A There's no guarantees.

7 Q Okay. It is possible for him to get out and become
8 a productive member of society. Is that correct?

9 A Yes.

10 Q Okay. Now, in back in his history, the sexual
11 violent crimes in history occurred eight, nine years ago.
12 Is that correct?

13 A That's correct.

14 Q When he was basically -- he's twenty-one now -- he
15 was thirteen, twelve years old. Is that correct?

16 A You're referring to his index charges?

17 Q Yes.

18 A Yes. Correct.

19 Q Now, since that time, he has actually -- he has not
20 actually had any sexually violent incidents. Is that
21 correct?

22 A No, sir, not that -- no, sir, not that we know
23 anything about. While he's been incarcerated, there have
24 been no sexually violent charges that I'm aware of.

25 Q Okay. And since he has been, you know, in the

Leonard William Mulbry, Jr. - Cross by Mr. Brooks

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1 Department of Juvenile Justice, it's fair to say that he
2 would have had a great opportunity to do so, isn't that
3 correct?

4 A (No response)

5 Q He would've been locked up ---

6 A These things -- these things do happen, yes.

7 Q He would've been locked up with other individuals.
8 Is that correct?

9 A Yes, that is correct.

10 Q And he would've had plenty of opportunity to engage
11 in other sexual violent behaviors. Is that correct?

12 A They do occur, yes.

13 Q Okay. And you have seen situations through the
14 course of your evaluation of other people where they have
15 had sexual violent things when they've been locked up. Is
16 that correct?

17 A I know those things happen. Actually in my
18 evaluations I've not run across that.

19 Q Okay. But you are aware that those things going to
20 happen.

21 A Those do happen, yes.

22 Q For the fact that you're talking about an eight to
23 nine year window where in this gentleman's life that did
24 not occur. Is that correct?

25 A That's correct.

Leonard William Mulbry, Jr. - Cross by Mr. Brooks 99

1 Q Now, is it -- the fact that it hasn't occurred in
2 eight, nine years -- eight or nine years -- while you may
3 not necessarily side with this view, it is possible that
4 a person could've grown out of this. Is that correct?

5 A Yes.

6 Q Okay. And one of the things that Mr. Bogle asked you
7 was about if there was going to be any type of probation,
8 parole, if Mr. Whitlock was released. It is fair to say
9 that he would be on some type of community supervision.
10 Is that correct?

11 A None that I'm aware of.

12 Q Okay. But he would -- let me ask you this. You are
13 familiar with the sexual registry requirement in South
14 Carolina.

15 A Yes.

16 Q He does have to register as a sex offender. Is that
17 correct?

18 A I believe he does based on his offense, yes.

19 Q And what are those requirements, if you know them,
20 doctor?

21 A I'll tell you what I know. I'm not an expert and I
22 didn't prepare for that. I know you have -- twice a year
23 you have to go to the sheriff's office and tell them where
24 you live.

25 Q Okay. So if Mr. Whitlock gets released here today,

Leonard William Mulbry, Jr. - Cross by Mr. Brooks 100

1 he still has to do that. Is that correct?

2 A Correct.

3 Q And he has to let the sheriff's office, assuming it's
4 York County or Union County or whatever, he's got to go --
5 that's an affirmative duty that he's got to do, and if he
6 doesn't do it, that is a crime in itself --

7 A Yes.

8 Q -- that he could be subject to criminal charges.

9 A Yes.

10 Q Okay. So if he does that -- the fact that he still
11 has to do that, there's some way that he has to subject
12 himself to some type of monitoring. Isn't that correct?

13 A In that he has to report twice a year and report his
14 current address to the sheriff's office, yes.

15 Q As well as he also will appear on the internet as
16 well. Is that correct?

17 A Yes.

18 Q Along with all the other sex offenders. Is that
19 correct?

20 A That's correct.

21 Q So he does have some -- there will be some type of
22 monitoring mechanism for him if he gets out. He has to
23 register and he will be on the internet.

24 A Those two -- those things are true, yes.

25 Q Okay. Do you know if he's going to be subject to the

Leonard William Mulbry, Jr. - Cross by Mr. Brooks 101

1 GPS monitoring?

2 A I do not know that.

3 Q Okay. Are you familiar with GPS monitoring?

4 A Roughly, yes. I know that certain types of
5 convictions do -- they do require GPS monitoring. I don't
6 know about his specifically.

7 Q Okay. And since -- you don't know, but GPS
8 monitoring is where they put the ankle bracelet on you.
9 Is that correct?

10 A (Indicating yes) That's correct.

11 Q And they monitor you twenty-four/seven. They being
12 the -- I would -- Department of Probation Pardon and
13 Parole in that particular county. They monitor the people
14 on the GPS system. Are you aware of that?

15 A They are -- as I understand it -- as I understand it,
16 they're able to later on retrospectively determine where
17 you've been.

18 Q You would agree that that is some type of monitoring
19 system --

20 A Yes, sir.

21 Q -- that he would have to -- would have to -- if he is
22 subject to GPS monitoring, he would have to avail himself
23 to the, you know, other citizens in the world do not.

24 A That would be true if he is subject to the GPS
25 monitoring.

Leonard William Mulbry, Jr. - Re-Direct by Mr. Bogle 102

1 Q And there will be some type of tracking mechanism
2 that obviously can tell where that person, in this case
3 Mr. Whitlock, will be. Is that correct?

4 A Where he's been, yes, sir.

5 Mr. Brooks - Okay. Beg the Court's indulgence,
6 Your Honor.

7 The Court - Yes, sir.

8 Q Doctor, as a part of his evaluation, did you talk to
9 his family members?

10 A I did not.

11 Q So -- and let me ask you this, doctor. If a person
12 has a very good support mechanism when they get out,
13 wouldn't that increase the chances of them becoming a
14 productive member of society and not going back to doing
15 some of the things that caused them to get incarcerated?

16 A Yes.

17 Q Okay. And since you didn't talk to the family, you
18 don't necessarily know what the potential support
19 mechanism would be or could be. Is that correct?

20 A I don't know the specifics, that's correct.

21 Mr. Brooks - No other questions, Judge.

22 Mr. Bogle - Just a couple on Re-direct if I may.

23 Re-Direct Examination

24 by Mr. Bogle -

25 Q Dr. Mulbry, counsel asked you about the charges that

Leonard William Mulbry, Jr. - Re-Direct by Mr. Bogle 103

1 were brought against the Respondent and later not
2 prosecuted. Would you turn to page 14 of your report,
3 please.

4 A (Witness complies)

5 Q Okay, looking at the -- now, previously on your
6 direct examination yesterday, I showed you what's been
7 marked as Exhibit Number 6, a Juvenile Petition, Docket
8 Number 02-623 for criminal sexual conduct with a minor in
9 the first degree for an incident that happened in 2002.
10 Do you remember that one?

11 A I do.

12 Q And that's one they've got dismissed or nol prossed
13 or dropped by the prosecutor. Correct?

14 A Yes, sir.

15 Q But in your report, in your interviewing, in doing
16 your research on this case, did you look behind that
17 document to see what the Respondent had told other
18 evaluators about this particular incident?

19 A I did.

20 Q And what did he say to Dr. Musick, for example, the
21 Court-Ordered evaluator? What'd he say about that
22 particular incident that occurred in 2002?

23 A He explained that while a resident in a group home,
24 he intimidated a same age resident to lie down, forced his
25 pants down and stuck sticks in his butt in order to hurt

Leonard William Mulbry, Jr. - Re-Direct by Mr. Bogle 104

1 him.

2 Q Okay. So even though that case wasn't prosecuted to
3 a conviction, are you -- did the research you did indicate
4 that he acknowledged that something wrong happened, that
5 something bad happened?

6 A That was the report that he gave another evaluator.

7 Q Okay. Now, are you aware of any sex offender
8 treatment that has been set up for O'Bryan Whitlock right
9 now? If he walks out of this courtroom today or tomorrow,
10 is there any sex offender treatment in place for him right
11 now?

12 A No.

13 Q Any appointment been made? Anything like that been
14 made aware to you?

15 A No.

16 Q Okay. Is there anything you've seen in your
17 researching Mr. Whitlock that suggests that he has grown
18 out of or outlived or gotten older and somehow grown out
19 of his urge to sexually re-offend in a sexually violent
20 manner?

21 A No.

22 Q Why not?

23 A I am interpreting the continual -- the long line of
24 sexual acting out that we see in the -- in DJJ and in
25 SCDC, the Department of Corrections, and most recently in

Leonard William Mulbry, Jr. - Re-Cross by Mr. Brooks 105

1 the York County jail up through January -- we have records
2 through January of this year, and he has been brought up
3 on charges repeatedly for sexually acting out. Now those
4 -- as pointed out, those were not -- wouldn't be defined
5 as sexually violent acts. They are public masturbation
6 and exhibitionism.

7 Q Okay.

8 A But I don't perceive those as benign either.

9 Q And as I understand, this thing about GPS monitoring,
10 GPS -- you can look at GPS monitoring and tell where
11 someone's been after they've been there.

12 A Correct. That's my understanding of it, is it simply
13 records where someone's been so that later on you can look
14 on a -- you can look it up and see where they were.

15 Q So GPS can't prevent you from going where you
16 shouldn't go, can it?

17 A No.

18 Mr. Bogle - Thank you, doctor. Nothing further,
19 Your Honor.

20 The Court - Any Re-Cross?

21 Re-Cross Examination

22 by Mr. Brooks -

23 Q Just briefly, doctor. You said that the incidents
24 that were rather recent, such as public masturbation in
25 York County, and you said that in your opinion these are

Leonard William Mulbry, Jr. - Re-Cross by Mr. Brooks 106

1 not necessarily benign. Is that correct?

2 A Correct.

3 Q And I'm sure Mr. Whitlock is not the only person over
4 there that perhaps may have engaged in that behavior.

5 Mr. Bogle - Objection as to relevancy, Your
6 Honor. Other people doing other things, different ages.

7 The Court - I sustain. It's not relevant what
8 other folks do. It's relevant to what this individual
9 does.

10 Mr. Brooks - Could I at least respond to that
11 before you rule, Judge?

12 The Court - Yes.

13 Mr. Brooks - The reason I think that's relevant
14 is because that is not a violent act, and obviously unless
15 there's other -- we would -- we would put forth to the
16 Court that if you're just going to go --

17 The Court - Here's the objection, though. The
18 objection is your question was about other people in
19 there. That was -- the objection was irrelevant. I
20 sustain that as to other people, but you can discuss Mr.
21 Whitlock's conduct.

22 Mr. Brooks - Okay.

23 Q Doctor, if -- you do agree that that was not violent
24 as it relates to Mr. Whitlock.

25 A Yes.

Leonard William Mulbry, Jr. - Re-Cross by Mr. Brooks 107

1 Q And that there has not been any violent episodes
2 while he has been detained in York County.

3 A Correct.

4 Q Okay.

5 Mr. Brooks - No other questions.

6 The Court - All right. Dr. Mulbry, thank you
7 very much, sir. You can step down.

8 Dr. Mulbry - Thank you.

9 Mr. Bogle - Your Honor, with the Court's
10 permission, we would ask that Dr. Mulbry be excused. He's
11 got other patients down in Charleston. We'd like to send
12 him on back if it's okay.

13 The Court - Any objection?

14 Mr. Brooks - That's fine, Judge.

15 The Court - All right. Thank you very much,
16 sir. You're free to go.

17 Mr. Bogle - Your Honor, at this time the State
18 would rest.

19 The Court - All right. Ladies and gentlemen,
20 the State is resting their case and before we proceed, I
21 have to take up certain matters at the close of the
22 State's case. Now, I'm going to ask you to step back into
23 your jury room for a moment, but this time while you're
24 back there, I need you to do -- I need to assign you a
25 little homework here. I used to appoint a foreperson for

1 juries and ran into a situation where I couldn't find
2 anybody on the jury who wanted to do it. I have had a
3 young lady who I asked to do it, and she said she didn't
4 want to, and so I had to back-up and I asked this
5 gentleman to do it -- if he would do it, and he didn't
6 want to. Well, I didn't have a back-up for my back-up, so
7 I looked down the list and I just picked a name and I
8 asked this other gentleman, he didn't want to, so I
9 finally told them, I said, look, you got to have a
10 foreperson, go back there and elect one. So from that day
11 forward, I don't appoint fore-people anymore. I let the
12 juries elect them themselves. Let me tell you a little
13 bit about the job or the role of the foreperson so you're
14 not -- if you're intimidated by that, there's no need to
15 be. Ladies and gentlemen, the foreperson of the jury is
16 simply the contact person between the jury panel and the
17 Court. If at anytime during your deliberations or
18 whatever, someone has a question, then the foreperson
19 would write that question out and pass it out to the
20 Court; I'll review the question and I might be able to
21 respond just by writing my answer on paper, or I may bring
22 you all out and respond to you as a panel. But that's the
23 main role of the foreperson, is to be the communicator
24 between the jury panel and the Court. Once you begin your
25 deliberations, the foreperson also is the one that starts

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1 and stops the deliberations. I will tell you that once
2 you begin your deliberations that everyone must be
3 present, so that if anyone needs to excuse themselves or
4 use the restroom or whatever, the foreperson would say,
5 okay, let's stop talking about the case until they return,
6 and then upon their return, say okay, let's start back.
7 What I will also tell you is that all of you are equal
8 members of the jury. No one person's opinion, no one
9 person's thoughts have any authority over another person.
10 All of you are twelve equal individuals and so -- and your
11 verdict in this case must be unanimous, so as you can see,
12 one person's opinion or thoughts carry no more weight than
13 anyone else's. So the foreperson doesn't run the show,
14 they don't -- they don't have anymore authority over
15 anyone else than anyone else on the jury. It's just that
16 when you have a group of folks and you're deliberating and
17 you're discussing, it's just easier and one necessary to
18 have just one person who starts and stops the
19 deliberations. Now, you'll also -- when the time comes,
20 you'll have a verdict form that you'll have to consider,
21 and of course, the jury makes the decision, your verdict
22 in this case, and the foreperson would then just fill out
23 that verdict form and sign it as the foreperson. So
24 that's basically what a foreperson does. It's no heavy-
25 lifting so-to-speak involved. It's just we need to have

1 a foreperson, so I'm going to ask you if you would, when
2 you go back into your jury room to elect a foreperson for
3 the jury and let me go ahead and tell you now that --
4 let's see -- everyone on the panel is eligible to be the
5 foreperson other than Ms. Crenshaw. Ms. Crenshaw, you're
6 the alternate, and you'll occupy that chair. When you go
7 back and you have a foreperson elected, whoever that is,
8 if you would just write your name on a piece of paper and
9 pass it out to the bailiff and he'll bring it out so that
10 I'll have that information and then when you do return,
11 I'll ask that the foreperson sit in this first chair right
12 here, and then the rest of you sit wherever you're
13 comfortable. Okay? So while I'm taking up these legal
14 matters, I'm going to get y'all to go back and do that.
15 If you need anything from the bailiff, let them know and
16 he'll bring you whatever you need.

17 (Jury exits the courtroom)

18 The Court - All right, at this time we'll take
19 up any motions at the close of the State's case.

20 Mr. Brooks - May it please the Court, Judge.

21 The Court - Yes, sir.

22 Mr. Brooks - We would ask the Court for directed
23 verdict in this matter. We feel that it's our position --
24 put on the record that the State has not shown that my
25 client has a predisposition which predisposes him to re-

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1 offend, and that's the position we would put before the
2 Court. That's our motion.

3 The Court - All right, sir. I'm going to
4 respectfully deny that. Again, I think it's an issue that
5 is a jury question based on the testimony that Dr. Mubly
6 put into the record. You may be right that they may not
7 find that there's sufficient evidence, but I do think that
8 there is the existence of evidence that they could
9 possibly find depending on how they view the evidence, and
10 obviously it is the jury's province to give weight to that
11 evidence and testimony, so I'm going to respectfully deny
12 your motion. Anything further from anybody?

13 (No response)

14 The Court - You need any time before we get
15 started. I need to give them a few minutes probably to
16 elect a foreperson.

17 Mr. Brooks - Whenever you're ready I'd like to
18 call Mr. Musick to the stand.

19 The Court - Okay. Why don't we just take a
20 short break and give them that opportunity and then when
21 they pass out their decision, we'll go ahead and get
22 started back. All right.

23 (Recess taken)

24 The Court - Bring the jury in.

25 (Jury enters the courtroom)

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1 The Court - All right, Mr. Johnson, thank you
2 for your willingness to serve as the foreman of the jury.
3 I appreciate that, sir. And, ladies and gentlemen, we're
4 ready to proceed. When we broke, you'll recall that the
5 State had rested their case and so we now recognize Mr.
6 Brooks on behalf of the Respondent.

7 Mr. Brooks - Yes, sir, Judge. We would call Dr.
8 Jeffrey Musick.

9 The Court - All right, Dr. Musick, if you'd
10 please come around and be sworn, sir.

11 Dr. Jeffrey Musick, after being first duly
12 sworn, testifies as follows -

13 Mr. Brooks - You ready, Judge?

14 The Court - Yes, sir.

15 Mr. Brooks - You ready, doctor?

16 Dr. Musick - Yes, sir.

17 Direct Examination

18 by Mr. Brooks -

19 Q Dr. Musick, how are you today?

20 A Good, thank you.

21 Q All right, and we start off by getting a little
22 background information from you. Where do you work?

23 A I work at the Forensic Evaluation Service of the
24 South Carolina Department of Mental Health.

25 Q And how long have you been working there?

Jeffrey Musick - Direct by Mr. Brooks

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1 A Approximately twelve years.

2 Q Okay. Now, I mentioned doctor, so can I ask you a
3 little bit about your educational background.

4 A Yes, I have a bachelor's degree in psychology from
5 Miami University. I have a master's degree in clinical
6 psychology from the University of Florida and I have a
7 doctorate in clinical psychology also from the University
8 of Florida. I'm also licensed as a psychologist in the
9 State of South Carolina, and I'm also board certified as
10 a forensic psychologist, board certified in forensic
11 psychology, I should say.

12 Q And you obviously testified in Court before on these
13 issues of forensic psychology?

14 A Yes, I have.

15 Q Okay. And do you recall how many times you've
16 testified?

17 A I've probably been recognized as an expert witness in
18 forensic psychology about forty-five times in my career.
19 Each time that I've been submitted to be an expert I've
20 been recognized as one.

21 Q Okay.

22 Mr. Brooks - At this time, Your Honor, I would
23 put forth Dr. Musick as an expert in the field of
24 forensics psychiatry --

25 Q Is it forensic --

Jeffrey Musick - Direct by Mr. Brooks

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1 A Psychology.

2 Mr. Brooks - -- for forensic psychology.

3 A Yes, sir.

4 Mr. Bogle - No, objection, Your Honor.

5 The Court - All right, without objection.

6 Q All right. Dr. Musick, first off, you have -- you
7 testified at Mr. Bogle's request before, haven't you?

8 A Yes, I have, multiple times.

9 Q So I mean you -- sometimes you come as a result of
10 the Respondent calling and sometimes you come as a result
11 of Mr. Bogle and the Attorney General's office calling.
12 Is that correct?

13 A Right. This is actually the first time I've appeared
14 as a witness for the Respondent.

15 Q For me to call you. Is that right?

16 A Yes, for the defense to call me.

17 Q Okay. Now, you know, I'll get right to it, doctor.
18 You evaluated Mr. Whitlock. Is that correct?

19 A Yes, I did.

20 Q Okay. And you obviously -- well, let me ask you
21 this, doctor. Did you -- you've heard Dr. Mulbry testify.
22 Is that correct?

23 A I did.

24 Q You -- you looked at all of those records, those same
25 records that he talked about?

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1 A I'm sure I looked at the large majority of the
2 records. I don't have a definitive listing of every
3 single sheet of paper that he looked at, but I have -- you
4 remember he held up his hands and said he had a stack of
5 about like this? That's about what I had.

6 Q Okay. So I mean I guess what I'm saying, it's pretty
7 fair to say that you reviewed everything that he reviewed.

8 A I was familiar with all the documents that were
9 specifically presented in Court.

10 Q Okay.

11 A I can say that.

12 Q Okay. So in all of those things that Mr. Bogle
13 through Dr. Mulbry got as exhibits, you've seen those.

14 A Yes.

15 Q And you had the opportunity to look at those and
16 basically use those in order to -- as a part of your
17 evaluation of Mr. Whitlock.

18 A Yes.

19 Q Okay. Now, doctor, I don't want to bore this jury,
20 because I'm sure they, you know, would like to get right
21 to it. Since you reviewed everything, the same materials
22 that Dr. Mulbry looked at as a part of his evaluation, can
23 you tell the Court what your conclusion was?

24 A My conclusion was that Mr. Whitlock did not meet the
25 legal criteria to be considered a sexually violent

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1 predator.

2 Q Okay. Now, doctor, you know, I'm going to ask you to
3 break it down in laymen's terms. Why is that?

4 A Well, um, if I may start by just reminding the jury
5 of the definition of sexually violent predator.

6 Q Sure. Go ahead, doctor. I'm sorry.

7 A It involves two parts, one, that the person's
8 committed -- been convicted of a sexually violent offense
9 and the second part is that the person has a mental
10 abnormality or personality disorder that makes them likely
11 to commit additional sexually violent offenses if not
12 confined, and that's just paraphrasing the definition.
13 Now, like Dr. Mulbry, I think that Mr. Whitlock does have
14 a mental abnormality or personality disorder in the form
15 of anti-social personality disorder that could meet the
16 sexually violent predator laws requirements for a
17 predisposing mental condition. Okay? And by that -- by
18 predisposing I just mean one that sort of sets a person up
19 to commit sexually violent offenses, one that gives them
20 an inclination or a tendency to do that.

21 Q Okay.

22 A However, as -- as has been pointed out, Mr.
23 Whitlock's sexually violent offenses occurred when he was
24 age twelve, and now he's age twenty-one, and there have
25 been no confirmed sexually violent offenses by Mr.

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1 Whitlock since then, even though while he's been in
2 confinement, he has reportedly engaged in sex, he's
3 reportedly engaged in non-sexual violence in the form of
4 fights and assaults and so forth, and he's also reportedly
5 engaged in non-violent sexual offenses in the form of
6 public masturbation and exposing himself. So from that
7 information there doesn't appear to be any mature or
8 longer term pattern of sexually violent offending by Mr.
9 Whitlock. Therefore, I don't see any clear basis to say
10 that his anti-social personality disorder predisposes him
11 or sets him up to commit sexually violent offenses.

12 Q Okay. Now, and, doctor, to be fair, as you indicated
13 you work for the Department of Mental Health, how many
14 times have you evaluated people -- and when I say SVP, I'm
15 talking about the sexual violent predator -- how many
16 times have you evaluated people for part of the SVP
17 process?

18 A I've completed fifty-three of these type of
19 evaluations.

20 Q Okay. And when you say you completed fifty-three, is
21 that I reviewed and evaluated fifty-three and made an
22 opinion that some of them need to go into the program, or
23 is that --

24 A Yes.

25 Q Okay. All right, so you've obviously evaluated

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1 fifty-three people, and how many as a part of that did you
2 think should go into the program?

3 A It was my opinion that fifteen of the fifty-three met
4 the criteria to go -- as a -- to be a sexually violent
5 predator.

6 Q Okay. So obviously, you've -- you have evaluated
7 situations where in your opinion you thought that because
8 a person had these problems that they should go into the
9 program. Is that correct?

10 A Yes, on fifteen occasions.

11 Q Okay. And again, it's your opinion that Mr. Whitlock
12 is not in that category. Is that correct?

13 A Right. It's my opinion that he doesn't meet the
14 legal criteria to be considered a sexually violent
15 predator.

16 Mr. Brooks - No other questions.

17 The Court - Mr. Bogle?

18 Mr. Bogle - Thank you, Your Honor. May it
19 please the Court.

20 Cross Examination

21 by Mr. Bogle -

22 Q Good morning, Dr. Musick.

23 A Good morning, Mr. Bogle.

24 Q Some of the questions I might ask you have to do with
25 your reports. If you could have a copy handy, that might

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1 make it go a little quicker.

2 A Sure. Sure.

3 Q First off -- now, one of the -- isn't it true that
4 one of the preliminary steps for men who are nearing the
5 end of their prison term gets screened to see whether or
6 not they should be in this type of situation sexually
7 violent predators -- is a screen by something called the
8 multi-disciplinary team. Is that correct?

9 A That's correct.

10 Q And that team is a team that meets out at the prison,
11 Department of Corrections' property, once a month to
12 review these cases. Is that correct?

13 A That's correct.

14 Q And your duties, while you're still a chief
15 psychologist at the Department of Mental Health, you have
16 recently become a member of that team. Is that right?

17 A Yes, back in November was my first participation in
18 the multi-disciplinary team.

19 Q Okay. And as a member of that team, you can't do
20 evaluations like this one because it would be a conflict
21 of interest. Right?

22 A That's right. I did this one before --

23 Q Right.

24 A -- I was a member of the team.

25 Q This was done before that.

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1 A Yes.

2 Q Okay. So no problem there. Now, in your -- now the
3 multi-disciplinary team, once they review a case, if they
4 vote for it to go forward, the next step is a prosecutor
5 review committee. Is that right?

6 A That's right.

7 Q And if they vote it to go forward, then it comes to
8 our office where we file a petition like we did with Mr.
9 Whitlock. Is that right?

10 A Yes.

11 Q And isn't it true that in your experience, the vast
12 majority of the people who are viewed by the multi-
13 disciplinary team do not get referred forward to the next
14 step?

15 A Yes, I think it's about eighty percent who do not get
16 forwarded to the next step.

17 Q In fact, in a more recent meeting, weren't there
18 about thirty cases reviewed and only five were referred
19 forward to the next step?

20 A Yes, that would be about twenty percent.

21 Q Okay, so it's safe to say as you conclude from that,
22 that the ones referred to go forward to the next step are,
23 shall we say, the worst of the worst?

24 A Yes, the idea is that they may meet the criteria to
25 be considered a sexually violent predator, so the team is

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1 seeing elements of the definition of sexually violent
2 predator in the information that's available to them.

3 Q All right. Because everybody in prison who's been
4 convicted of a sexually violent crime and has done time
5 for that, passed are (sic) reviewed by that multi-
6 disciplinary team. Is that right?

7 A Yes, that's correct.

8 Q Now, in this particular case, if you can look on your
9 report. At the top of page three, there's a reference to
10 animal cruelty offenses. Did you do any further
11 investigation into what type of animal cruelty offense
12 that was?

13 A Yes. That speaks to a -- a adjudication -- a
14 delinquency adjudication he had as a child involving the
15 killing of a neighbor's bird.

16 Q Okay.

17 A It's referenced elsewhere in the report.

18 Q And by delinquency adjudication, you mean he was
19 found guilty in Family Court. Is that what that means?

20 A Yes. Yes.

21 Q Okay. And on page four, there's a reference to the
22 closed head injury he had when he was much younger. As I
23 understand that's -- the scan on that was negative and he
24 had a full recovery. So that's not an issue in this case
25 today, is it?

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1 A Does not appear to be, no.

2 Q Okay. And on page five, when you're reviewing notes
3 from some of the Department of Juvenile Justice documents
4 there, there seems to be a reference to him not taking
5 responsibility for his own -- for his own behavior? Are
6 you finding that? Did you observe that in their
7 documents?

8 A Yes, notes -- what I wrote was notes from the 7/15/10
9 and 6/4/10 indicate that Mr. Whitlock does not take
10 responsibility for his own behavior. Is that what --

11 Q And when he was on medication he wouldn't be
12 compliant with the medication? Was that something you
13 also found in their reports of him?

14 A Yes.

15 Q Okay. Is it safe to say that he spent so much time
16 in lock-up at various places, he didn't really get any
17 effective sexual offender treatment while either at DJJ or
18 the Department of Corrections?

19 A Yes, I mean it -- he did at some point, according to
20 the records, complete some treatment but given his
21 subsequent episodes of public masturbation and
22 exhibitionism, it didn't really seem like the treatment
23 was that effective.

24 Q Didn't take if you will.

25 A Okay, yes.

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1 Q Okay. Is it -- So in your opinion, he needs -- is it
2 your opinion then that he needs more sexual offender
3 treatment if he's released?

4 A It might help him, yes.

5 Q Are you aware of whether or not any sexual offender
6 treatment has been set up for him if he does walk out of
7 this courtroom?

8 A I'm not aware of whether it has or it hasn't. I
9 don't have that information.

10 Q In the course of your investigation of his situation,
11 did you speak with family members, talk to family members
12 about him and about where he might live or what his
13 background is?

14 A I did not speak to any family members. He told me he
15 was planning to live with his mother.

16 Q Okay. What about the victims who were his victims in
17 these criminal sexual conduct with a minor in the first
18 degree cases? Did you make any effort to contact the
19 victims or their families to see how they reacted to it or
20 what had happened to them?

21 A No, I didn't make any attempt to reach any victims or
22 victims' family members.

23 Q And based on your report, you would agree with me
24 that he has been convicted of three sexually violent
25 crimes. Is that correct?

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1 A Based on the legal paperwork available, yes.

2 Q Okay. And these would be the criminal sexual conduct
3 with a minor in the first degree that he was found guilty
4 of in Family Court back in 2003. Is that right?

5 A Yes, I believe it was 2003.

6 Q And it also seems -- if you would go to page -- let's
7 see -- page eight of your report -- I apologize. Did you
8 interview Mr. Whitlock about what was going through his
9 mind when he committed the offenses against the three
10 young boys that led to his convictions?

11 A Yes, I did.

12 Q Okay. What did he have to say about those? Why --
13 well, for example, in the second paragraph, the first --
14 the first new paragraph on page eight, at the end of that
15 paragraph, what did he say about why he -- why he
16 committed these or why -- why he did these -- these
17 offenses?

18 A Well, he said that -- this is regarding the first
19 conviction and he said that he doesn't -- didn't recall it
20 and -- but that he would not have committed -- committed
21 it if at the time he knew how to masturbate.

22 Q Okay. And there have been, as I understand your
23 report, multiple incidents and all of his lock-ups with
24 him exposing himself, masturbating in front of female
25 correctional officers and that sort of thing. Right?

Jeffrey Musick - Cross by Mr. Bogle

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1 A It occurred in DJJ facilities and Department of
2 Correction facilities. I don't know if it occurred in
3 every single facility but multiple ones.

4 Q Did you check -- did you check to see if it's still
5 occurring here at the York County Detention Center?

6 A Yes, prior to the trial I requested records from the
7 York County Detention Center about any disciplinary
8 problems that he's had since he came here last -- I
9 believe it was last October.

10 Q And still happening here? This type of conduct is
11 still happening here?

12 A Yes, I believe there were -- let me check. I think
13 I made a note. It wouldn't be in my report, but I think
14 I made a note. There were two -- between October 9th,
15 2011 and May 9th, 2012, there were two infractions for
16 masturbation at the York County Detention Center.

17 Q Okay. Now, I noticed that one of the instruments
18 that you scored him on was something Dr. Mulbry also used
19 called the Static 99-R for revised.

20 A Right.

21 Q And that as I understand it, isn't it true the Static
22 99-R measures fixed things that happened, things you can't
23 change, and that's why it's called Static?

24 A Right.

25 Q Like numbers or convictions, that sort of thing.

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1 A Things from the past, historical events.

2 Q Right. And it's based on measuring up against
3 thousands of sex offenders in multiple countries. That's
4 where they got this pool it's measured against. Is that
5 right?

6 A Yes, there are -- there are -- in the comparison
7 groups, there are thousands of sex offenders.

8 Q Because the previous version, the Static 99 was only
9 based on a smaller sample from the United Kingdom and
10 Canada. Is that right?

11 A It's true. It was based on a smaller sample.

12 Q So the revised version is based on much larger sample
13 and I would -- you would agree with me that makes it more
14 accurate. Does it not?

15 A The revised version is pretty much been accepted as
16 the superior version --

17 Q Okay.

18 A -- to the original, yes.

19 Q And is it also true the Static 99-Revised is
20 something that's commonly used in your profession in
21 making these types of evaluations like you did with Mr.
22 Whitlock?

23 A Yes, for these evaluations it's very commonly used.

24 Q And the score you gave him -- I'm looking at page
25 twelve of your report -- it doesn't give a number, but I

Jeffrey Musick - Cross by Mr. Bogle

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1 assume it's either eight or nine. Is that right?

2 A It was a nine.

3 Q Okay.

4 A The same score as Dr. Mulbry came up.

5 Q Which means he is -- he is as bad as -- what you seem
6 to say here is that ninety-nine percent of the sample of
7 sex offenders out there have less risk than he does.

8 A Well, I mean -- yes, what I wrote was approximately
9 ninety-nine percent had scores associated with less risk
10 for sexual re-offending than Mr. Whitlock's score.

11 Q Okay. So another -- is that another way of saying
12 he's worse than ninety-nine percent of the sample out
13 there, the sexual offenders out there?

14 A His -- what it means is his score is one that is
15 indicative of greater risk for sexual re-offending than
16 about ninety-nine percent of other sex offenders.

17 Q Okay. And the diagnosis you had was the same as Dr.
18 Mulbry, anti-social personality --

19 A May I add something to that?

20 Q Oh, please.

21 A But what I want to -- what I wanted to add about that
22 is that the Static 99 -- when I say sexual re-offending in
23 terms of the Static 99, the Static 99 counts things as
24 sexual re-offenses that aren't sexually violent offenses,
25 so at least some of the re-offending that's done by

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1 individuals in the -- in the sample groups that are the
2 basis for the Static 99 have done things like public
3 masturbation or exhibitionism. They're not -- it's not
4 all -- not all the re-offending is sexually violent
5 offenses as to South Carolina statutes would define them.

6 Q Okay. But at the same time, is it true you've never
7 had a report you've done on evaluation of a sexually
8 violent predator case where a guy has scored this high and
9 you recommended he not be committed?

10 A That's true.

11 Q And on page 14, you do acknowledge the same -- you
12 did take the same diagnosis as Dr. Mulbry did, which is
13 anti-social personality disorder. Correct?

14 A Correct.

15 Q And that is, is that -- and you would agree with me
16 that's a recognized diagnosis in your profession can apply
17 to people who might be committed to the Sexually Violent
18 Predator Treatment Program. Is that correct?

19 A Yes, it's correct.

20 Q All right. And on page 14, you identify a number of
21 risk factors -- I'm reading the bottom. You see in here
22 at the bottom of the paragraph where it says he appears to
23 be at high risk for sexual re-offending. You see that?

24 A Let me just locate that.

25 Q About twelve lines from the bottom.

Jeffrey Musick - Re-Direct by Mr. Brooks

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1 A Yes. Compared to other adult male sex offenders, he
2 appears to be at high risk for sexual re-offending, though
3 there is no clear basis to say that any re-offending would
4 be in the -- would be in the form of a statutorily defined
5 sexually violent offense.

6 Q Okay. What are the risk factors that you identify
7 that he has that are listed right after that sentence in
8 the bottom of that paragraph? Would you read them out for
9 the jury?

10 A Certainly. He has several small to moderately size
11 risk factors for sexual re-offending not accounted for by
12 the Static 99-R, including anti-social personality
13 disorder, violation of probation, childhood behavior
14 problems, sexual preoccupation, impulsivity, self-
15 regulation problems and a hostile grievance based outlook.

16 Mr. Bogle - Thank you, doctor. Nothing further,
17 Your Honor.

18 The Court - Mr. Brooks?

19 Re-Direct Examination

20 by Mr. Brooks -

21 Q Doctor, just real quick, back on page eight of your
22 report, Mr. Bogle had asked you about as far as you knew
23 whether or not there was any -- talking about sex offender
24 treatment if he got out of being able to help him. Do you
25 recall him asking you that?

1 A Yes, I recall that question.

2 Q On your -- on page eight in the -- at the top of the
3 page and basically the second line from the end of that
4 paragraph, you reference that the petition, the SVP
5 Petition indicates that Mr. Whitlock is required to serve
6 two years under community supervision.

7 A Yes, I see that -- I see that line.

8 Q So that mean -- you also reviewed the Petition that
9 the Attorney General's office filed. Is that correct?

10 A I did.

11 Q That Petition was filed by Mr. Bogle himself. Is
12 that correct?

13 A Yes, sir.

14 Q And in that Petition it refers to the fact that Mr.
15 Whitlock will be on community supervision.

16 A That's what the Petition says.

17 Q Okay. And as a part of community supervision, is it
18 fair to say that they will be monitored by some probation
19 or parole officer?

20 A I think that's the usual procedure.

21 Q And then as part of that, is it fair to say that they
22 will get some type of supervision treatment program as a
23 part of being under community supervision?

24 A Well, I really don't know the specifics of what is
25 involved in community supervision.

Jeffrey Musick - Re-Direct by Mr. Brooks

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1 Q Okay. But -- and that may be because you don't know
2 all of the specifics about the terms of his community
3 supervision. Is that correct?

4 A Right. I don't know the terms of his community
5 supervision.

6 Q But you are familiar with sex offenders going on
7 community supervision before. Isn't that correct? I mean
8 you --

9 A I've seen cases where that there -- there is this
10 requirement for them to go on community supervision.

11 Q Okay.

12 A I never saw a detailed listing of what it involves.

13 Q Okay. But it's fair to say that if -- the limited
14 knowledge you know, that it would require some type of
15 monitoring, that somebody supervising you in some capacity
16 whatsoever. Isn't that correct?

17 A I would think there would be some sort of probation
18 officer type person.

19 Q Otherwise, why would they call it community
20 supervision. Right?

21 A Right.

22 Q Okay. Now you also -- he also asked you questions
23 about the multi-disciplinary team and how you are part of
24 it, that you became a part of that after you did Mr.
25 Whitlock's evaluation. Is that correct?

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1 A Right. I completed Mr. Whitlock's evaluation on
2 September 2nd, 2011 and I wasn't participating in the
3 multi-disciplinary team until November of 2011.

4 Q And Mr. Bogle asked you questions about that process,
5 going from the multi-disciplinary team and then it goes to
6 the prosecuting review team, then it comes to him or
7 somebody in his office who then files a Petition, and at
8 that point, assuming that they get a probable cause Order
9 to have you or somebody like you to do an initial
10 evaluation. Is that correct?

11 A Yes.

12 Q So even -- after -- is it fair to say that after a
13 lot of these reviews, that even when they file a Petition
14 and even when the Department of Mental Health gets
15 somebody, such as yourself to do an initial evaluation,
16 there's been quite a few times, a lot of times, that you
17 guys come back and say, we don't think this person meets
18 the criteria. Is that correct?

19 A Yes.

20 Q Okay. And at that point a lot of times the Petition
21 is dismissed and the person goes home.

22 A Yes.

23 Q And it's fair to say a lot of those people go off and
24 don't re-offend, to your knowledge.

25 A I don't have knowledge either way of hardly any of

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1 those cases as to whether they re-offended or not.

2 Q Okay. But I mean you would agree that sometimes
3 you've rendered evaluations and sometimes those
4 evaluations said that I didn't think the person met the
5 criteria and they went off and didn't re-offend.

6 A Not to my knowledge.

7 Q Okay.

8 A Yes, I -- but it's -- it's not something I keep track
9 of or am, you know, informed about by any mechanism that's
10 in place.

11 Q Okay. And it would be fair to say if a person like
12 Mr. Whitlock had what would be considered strong family
13 support mechanisms, that would actually reduce his risk of
14 re-offending. Isn't that correct?

15 A I've seen research that generally shows that a good
16 support system will, you know, help a person do better
17 than they would otherwise.

18 Q Okay, in essence reduce their risk to re-offend.

19 A I can't -- as an expert I can't say that I've seen
20 any specific information to sexual re-offending. I don't
21 recall anything, but generally speaking, that is the case,
22 that support systems can help a person, you know, stay on
23 track and ---

24 Q And you've indicated through Mr. Bogle's cross
25 examination that you didn't talk to his mother or his

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1 family. Is that correct?

2 A That's correct.

3 Q And as you've sat here and heard testimony, neither
4 did Dr. Mulbry. Is that correct?

5 A That's what I recall him saying, that he didn't speak
6 to the family either.

7 Q Okay. And finally, doctor, it's still your opinion
8 that he does not meet that criteria. Is that correct?

9 A Yes, that's correct.

10 Mr. Brooks - No other questions, Judge.

11 Mr. Bogle - Nothing further, Judge.

12 The Court - Thank you very much, doctor. You
13 can step down, sir.

14 Dr. Musick - Thank you, Your Honor.

15 Mr. Brooks - Judge, can the doctor be excused?

16 The Court - Any objection?

17 Mr. Bogle - No objection, Judge.

18 The Court - Thank you very much, sir. You're
19 free to go. We appreciate your being here. All right,
20 you want to take a short break?

21 Mr. Brooks - Take a short break. Yes, sir.

22 The Court - Ladies and gentlemen, let me get you
23 to step back in the jury room, please. Have no
24 conversation about the case and we'll get started back
25 here shortly. Okay?

1 (Jury exits the courtroom)

2 (Recess taken)

3 The Court - Mr. Brooks, does the Respondent have
4 any additional witnesses?

5 Mr. Brooks - Other than himself, Judge, I'd like
6 to bring that --

7 The Court - All right, Mr. Whitlock, am I
8 correct that you intend to testify? Is that correct?

9 Mr. Whitlock - Yes, sir.

10 The Court - All right, sir. Now, you understand
11 that -- and when you testify, obviously, when you're on
12 the stand, Mr. Brooks will have an opportunity to ask you
13 certain questions that -- and you'll have to answer those
14 questions. You understand that?

15 Mr. Whitlock - Yes, sir.

16 The Court - Okay. And then when he finishes,
17 then Mr. Bogle will have an opportunity to ask you
18 questions and you're going to be required to respond to
19 his questions as well. You understand that?

20 Mr. Whitlock - Yes, sir.

21 The Court - Okay. There is -- and I tell
22 everyone this -- every person this who is in Court, you
23 have the right to testify; you also have the right to not
24 testify. Do you understand?

25 Mr. Whitlock - Yes, sir.

1 The Court - You can do either one, and I always
2 tell folks, you know, talk with your attorney and, you
3 know, y'all make that decision. That's not a decision for
4 the Court to make. I just want you to understand that you
5 have a right to do either one. You understand that?

6 Mr. Whitlock - Yes, sir.

7 The Court - All right, sir. Anything further,
8 Mr. Brooks?

9 Mr. Brooks - Judge, I would just want the record
10 to reflect that in talking with my client, based on my
11 experience and expertise and seeing eye-witnesses testify,
12 it's my advice that he should not testify, because I --
13 been -- based on my experience I've got a great idea of
14 how Mr. Bogle's going to ask his questions. I don't think
15 that's going to be in my client's best interest and I have
16 relayed that to him, nevertheless, he has said he still
17 wishes to testify.

18 The Court - All right. Is that correct, Mr.
19 Whitlock?

20 Mr. Whitlock - Yes, sir.

21 The Court - You have talked with Mr. Brooks and
22 he's shared with you his -- his feelings on it. Is that
23 correct?

24 Mr. Whitlock - Yes, sir.

25 The Court - Okay. And even though y'all don't

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1 see eye to eye on that, you still have the right to
2 testify if you choose to and you've decided to testify.
3 You have decided to testify. Correct?

4 Mr. Whitlock - Yes, sir.

5 The Court - And you understand his position is -
6 - he believes it's in your best interest to not testify.
7 Is that correct?

8 Mr. Whitlock - Yes, sir.

9 The Court - Okay. All right. All right, well,
10 I'll certainly honor any request or any decision you make.
11 So if you choose to testify, then certainly I'll certainly
12 honor that. Okay?

13 Mr. Whitlock - All right, thank you.

14 The Court - All right, if everyone's ready,
15 we'll ask the jury to join us, please.

16 (Jury returns to the courtroom)

17 The Court - All right, ladies and gentlemen,
18 thank you for your patience and we'll recognize Mr. Brooks
19 for your next witness.

20 Mr. Brooks - Judge, our final witness would be
21 Mr. Whitlock.

22 The Court - All right, Mr. Whitlock, if you'd
23 please come around to the front of the first desk here and
24 be sworn, sir.

25 Mr. Whitlock - This one right here?

O'Bryan Whitlock - Direct by Mr. Brooks

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1 The Court - Right here, sir. Thank you, sir.

2 O'Bryan Whitlock, after being first duly sworn,

3 testifies as follows -

4 Mr. Brooks - You ready, Judge?

5 The Court - Yes, sir, Mr. Brooks.

6 Direct Examination

7 by Mr. Brooks -

8 Q Mr. Whitlock, how are you today?

9 A I'm doing good.

10 Q All right. And you've sat here in Court and you've

11 heard testimony about you from two different doctors. Is

12 that correct?

13 A Yes, sir.

14 Q Okay. And you wanted to be heard on this matter.

15 You've now had an opportunity to understand what all this

16 is about. Is that correct?

17 A Yes, sir.

18 Q And you wanted to -- you wanted to be able to address

19 the jury in this matter. Is that correct?

20 A Yes, sir.

21 Q Okay. Now, what do you want to tell the jury?

22 A About the fact that I know when people hear this --

23 hear the case of sex offense and stuff like that and

24 charges like that, you think the worst of the worst, but

25 I just want to point out to the fact that I was young when

O'Bryan Whitlock - Direct by Mr. Brooks

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1 I -- when I was convicted of those charges, twelve years
2 old, and I been locked up since then. You know what I'm
3 saying, and it's -- like right now I ain't -- it is what
4 it is, you know, but I'm older now. And because of my
5 incarceration they -- they had -- they had me locked up
6 since -- and locked up, you know, what I'm saying, but I'm
7 still here now, and uh I ain't never -- I ain't never sex
8 offended since I been locked up or nothing, you know what
9 I'm saying.

10 Q Let me ask you this, Mr. Whitlock. Let me ask you
11 this. Basically this entire case is about will you do
12 some of these things again. That's what it's about.
13 Okay?

14 A No, sir.

15 Q Now, I'm going to ask you. Let me ask you -- let me
16 ask you first. I know you're anxious to answer. Let me
17 ask you. If you're released, will you do these types of
18 things again?

19 A No, sir.

20 Q Okay. Now, I'm going to ask you this question and
21 I'm going to ask you this question, because I know Mr.
22 Bogle may ask you this question. Why should we believe
23 that you're not going to do this again? This is your
24 chance to tell the jury that.

25 A It ruined by life. It -- it -- people look at me

O'Bryan Whitlock - Direct by Mr. Brooks

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1 like I'm untrustworthy, like -- people probably looking at
2 me now, you know what I'm saying -- like people think bad
3 about people like that, you know what I'm saying. I made
4 a mistake when I was young. I ain't never did that no
5 more -- or nothing like that, you know what I'm saying --
6 or nothing -- I don't even know why my voice getting
7 hoarse right now. I ain't never did nothing like that.
8 I ain't like that. You know what I'm -- I just made a
9 mistake when I was young, twelve years old, young. I
10 ain't never re-offended, never attempted to re-offended or
11 nothing, none of that.

12 Q Now, O'Bryan -- O'Bryan, if you get out you'll be
13 living with your mother. Is that correct?

14 A Yes, sir.

15 Q Okay. And is the plan for you to basically -- since
16 you're -- you're twenty-one. Right?

17 A Yes, sir.

18 Q You'll turn twenty-two the end of this year, towards
19 the end of this year. Is that correct?

20 A Yes, sir.

21 Q Is it your plan to basically, you know, basically get
22 your feet on the ground and start getting some type of
23 work -- is that correct -- while living your mother.

24 A Yes, sir. I got plans on going into the military,
25 going to Job Corp, you know what I'm saying, doing --

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1 joining the United States Military and going into the
2 Army, doing stuff, having kids and family.

3 Q And basically try to, you know, do something with
4 your life. Is that right?

5 A Yes, sir.

6 Q Okay. And basically you want the opportunity to do
7 something with your life.

8 A Yes, sir.

9 Q Okay. Now, if you get released, you'll be on
10 community supervision. Is that right?

11 A Yes, sir.

12 Q And have you been told that what you've got to do as
13 part of community supervision?

14 A Yes, sir.

15 Q What do you have to do?

16 A Report to a probation officer like every month.

17 Q And don't you have to be a part of some type of sex
18 offender aftercare. Remember you told me that?

19 A Yes, sir.

20 Q So you're going to have to do some things to make
21 sure that you don't get back in those situations where you
22 were twelve and thirteen. Isn't that correct?

23 A Yes, sir.

24 Q Okay. So it's not like if you leave here today,
25 you're not going to have to do anything, not going to have

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1 any duties to do anything. Isn't that correct?

2 A Yes, sir.

3 Q Okay. All right. Is there anything else you want to
4 tell this jury?

5 A About the point that I had plenty of chances to re-
6 offended (sic) if I wanted to if I was like that. I
7 would've been home already. I was at the group home when
8 I was like twelve to thirteen to fourteen. I used to go
9 on public outings, skating rink, movies, I used to go on
10 home visits. I ain't never re-offended. I'd had
11 opportunities to where I could've -- I was alone with
12 other children my age and smaller. I ain't never re-
13 offended, never did nothing like that -- roommates.

14 Q Let me stop you there, Mr. Whitlock. Let me help you
15 out. Now, when you were in those group homes, you would
16 have weekend getaways. Is that correct?

17 A Yes, sir.

18 Q So weekend getaways you could actually go back home
19 to your mom.

20 A Yes, sir.

21 Q Is that right? So are you -- so during those
22 weekends you would -- you would go out with friends and
23 things of that nature. Is that right?

24 A Yes, sir.

25 Q And what you're saying is when you did that, there

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- 1 were no incidents. Is that correct?
- 2 A Yes, sir.
- 3 Q Okay.
- 4 A There was no incidents.
- 5 Q No incidents came up, no arrest, no -- none of that.
- 6 when you had those weekend getaways that you were away
- 7 from the home and went home to your mom. Is that right?
- 8 A Yes, sir.
- 9 Q That's what you're talking about. Am I correct?
- 10 A Yes, sir.
- 11 Q Okay. Go ahead. Go ahead. Finish your point.
- 12 A And I ain't never re-offended and then I'd a been --
- 13 I'd had roommates my same age, younger. I ain't never re-
- 14 offended, no records or nothing indicate that I ever
- 15 attempted to re-offend or nothing like that.
- 16 Q You have not gotten any charges while you been locked
- 17 up for sexually violent offenses. Is that correct?
- 18 A Yes, sir.
- 19 Q Okay. This was something you did eight, nine years
- 20 ago. Is that right?
- 21 A Yes, sir.
- 22 Q Okay. All right. Go ahead.
- 23 A I just want to really -- I need a chance to go on
- 24 with -- become a productive citizen --
- 25 Q Okay.

O'Bryan Whitlock - Cross by Mr. Bogle

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1 A -- and be released.

2 Q All right. Is there anything else you want to say
3 before I let Mr. Bogle ask you questions?

4 A No, sir.

5 Mr. Brooks - All right. No other questions
6 then. Mr. Bogle's going to ask you questions now. Okay?

7 Mr. Bogle - Thank you, Your Honor. May it
8 please the Court.

9 The Court - Yes, sir.

10 Cross Examination

11 by Mr. Bogle -

12 Q Good morning, Mr. Whitlock.

13 A Good morning.

14 Q You remember meeting with Dr. Musick who testified a
15 few minutes ago. Right?

16 A Yes, sir.

17 Q And you also met with Dr. Mulbry who testified
18 yesterday and today. Correct?

19 A Yes, sir.

20 Q And you also -- did your attorney also have you meet
21 with another psychiatrist named Dr. Martin down in
22 Columbia?

23 A (Indicating yes) Yes, sir.

24 Q You got -- you've to say it loud, because she has
25 take everything down, so you've got to talk.

O'Bryan Whitlock - Cross by Mr. Bogle

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- 1 A No, he just reviewed my records and stuff.
- 2 Q Dr. Martin reviewed your records?
- 3 A Yes, the same thing they did.
- 4 Q Okay. He's not here today, is he, Dr. Martin?
- 5 A I'm not sure.
- 6 Q Do you see him in the courtroom today, see anybody?
- 7 A (Indicating no)
- 8 Q All right. Now, the offenses you were convicted of
- 9 involved nine or ten year old boys. Is that right?
- 10 A Yes, sir.
- 11 Q And you pled guilty to those offenses in Family
- 12 Court. Is that right?
- 13 A Yes, sir, when I was twelve.
- 14 Q That means you did those crimes. Right?
- 15 A (No response)
- 16 Q Is there any doubt in your mind that you did those
- 17 crimes?
- 18 A When I was twelve. I --
- 19 Q Is there any doubt in your mind now that you did do
- 20 those things to those young boys back when that -- back
- 21 when it happened?
- 22 A I was already -- I'm already convicted of those
- 23 charges. I've already served my sentence and stuff for
- 24 those charges.
- 25 Q I understand you've been convicted. Is there any

O'Bryan Whitlock - Cross by Mr. Bogle

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1 doubt in your mind today that you did what you were
2 accused of and got convicted of back then?

3 A Like do I not think that I ain't did it or something?

4 Q Did you choke those boys? Did you force anal sex on
5 them? Did you do those things to those three young boys?

6 A I pled guilty to them charges. I done been convicted
7 of those charges.

8 Q Okay. And as far as being around boys nine and ten
9 years old, there's no one that age that you've been around
10 at the York County jail, is there?

11 A No, not recent --

12 Q And there's no one -- and there's no one that age
13 you've been around at the Department of Corrections while
14 you were there, is there?

15 A No, sir, not recent.

16 Q Okay. And at the DJJ places you were at, most of the
17 times when you were -- you were locked up, there was no
18 nine or ten year old boys around, were there?

19 A Not when I was in lock-up with -- general population
20 we have visits; we have community interacting where
21 families come in, and we talk and do things like that.

22 Q All right, but that's when families come to visit
23 their loved ones. Right?

24 A No, it's like -- it's called community, like
25 interacting, when people from the community come in and

O'Bryan Whitlock - Cross by Mr. Bogle

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1 talk. We play games and do stuff like that.

2 Q Okay. Okay. But it's under supervision. There's
3 somebody around watching, isn't there?

4 A Yes, sir.

5 Q Okay. So the chance of being alone with a nine or
6 ten year old boy, no chance of that happening, is there?

7 A Yes. It have been chances.

8 Q Okay. Now, when you talked to Mr. Musick, you
9 remember him interviewing about the incident that happened
10 in '02 to '03 where you struck the boy in the face before
11 he submitted and engaged in anal intercourse with him out
12 in the woods, and you told the doctor that you wouldn't
13 have done this if you'd have known how to masturbate at
14 the time? Do you remember telling the doctor that?

15 A What incident that is?

16 Q This is the one that happened between December of '02
17 and January of '03, nine year old boy.

18 A Oh, yes, he asked me about them offenses and I told
19 him that if I would've knew other ways of dealing with my
20 sexual needs and urges, I wouldn't have committed those
21 crimes.

22 Q Okay. Well, let's talk about your sexual needs and
23 urges. From what I've heard today, you've been caught
24 masturbating in front of correctional officers both at the
25 York County jail, at the Department of Corrections and at

O'Bryan Whitlock - Cross by Mr. Bogle

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1 DJJ. Is that right?

2 A Yes, sir.

3 Q Okay, and can you tell this jury why you feel the
4 need to do this in front of these officers?

5 A Most of the time -- I only caught them in lock-up, in
6 confinement. I never caught them in general population.
7 Most of the time I be in there masturbating or something,
8 the officer or somebody come through and look when they
9 doing they cell checks and see it and write me up for
10 something -- for indecent exposure.

11 Q Have you had sex with other men since you've been in
12 lock-up?

13 A No, sir.

14 Q You deny that?

15 A Yes, sir.

16 Q What about the time you tried to escape and choked a
17 female staffer when you were at DJJ?

18 A I did that --

19 Q She was choked into unconsciousness, wasn't she?

20 A No. She had -- I caught a charge for that -- with
21 the charge -- I ain't never got committed of that. I
22 ain't never got convicted of that charge. I tried to
23 escape from the group home. It ain't --

24 Q But you did choke her --

25 A -- like I just choked her to just choke her.

O'Bryan Whitlock - Cross by Mr. Bogle

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1 Q But you did choke this lady while trying to escape,
2 didn't you?

3 A Yes, sir.

4 Q Okay. And there's a time when you were found guilty
5 of animal cruelty back in 2001. That involved a
6 neighbor's pet bird. Is that right?

7 A Yes, sir.

8 Q And it says here you told Dr. Musick that you wanted
9 to kill the bird but did not know why.

10 A Yes, sir.

11 Q That you didn't like animals and you kicked -- you
12 kicked cats and dogs before. Is that right?

13 A May I say something?

14 Q Was that right?

15 A I --

16 Q Is that what you told Dr. Musick?

17 A I -- that's -- I about nine or ten when I did it. I
18 don't know why I did that.

19 Q Okay.

20 A The bird just ended up dying.

21 Q Has some kind of a sexual offender -- do you know for
22 sure if sex offender treatment is a requirement of the
23 community supervision if you walk out of this courtroom?

24 A Yes, based off my juvenile special conditions, my
25 special conditions is must -- my lawyer got a copy of the

O'Bryan Whitlock - Re-Direct by Mr. Brooks

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1 records -- I must cooperate with sex offender aftercare,
2 I must cooperate with community supervision. I got two
3 years community supervision, and I can't have no
4 unsupervision contact with the victims or the victims'
5 family. All that is under the special conditions under my
6 release after I been released.

7 Q Has an appointment been set up -- right now as we
8 stand here today, has an appointment already been set up
9 for you with sex offender treatment on the outside?

10 A No, sir, I -- but I got to go register, so that's
11 like sex offender treatment.

12 Mr. Bogle - Thank you, Your Honor. That's all.

13 Mr. Brooks - Just briefly.

14 Re-Direct Examination

15 by Mr. Brooks -

16 Q O'Bryan, --

17 A Sir?

18 Q -- you haven't had a chance to set up an appointment
19 for sex offender treatment as a part of community
20 supervision. Is that correct?

21 A Yes, sir.

22 Q Is that because you've been locked up?

23 A Yes, sir.

24 Q So you would make that appointment once you're able
25 to get released. Is that correct?

O'Bryan Whitlock - Re-Cross by Mr. Bogle

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- 1 A Yes, sir.
- 2 Q Because you would then go and register with your
- 3 parole officer. Isn't that correct?
- 4 A Yes, sir.
- 5 Q As part of your duties on community supervision. Is
- 6 that right?
- 7 A Yes, sir.
- 8 Q Okay.
- 9 Mr. Brooks - No other questions.
- 10 Re-Cross Examination
- 11 by Mr. Bogle -
- 12 Q Have you asked anybody to set up that appointment for
- 13 you?
- 14 A Yes, sir.
- 15 Q Have you asked the probation office to set it up for
- 16 you?
- 17 A Haven't no one came and talked to me yet, because I
- 18 ain't been released.
- 19 Q Have you asked your family to set it up for you?
- 20 A (No response)
- 21 Q Have you asked your family, your mother, your sister
- 22 or any of your relatives to set up an appointment?
- 23 A When I get out.
- 24 Q When you get out.
- 25 Mr. Bogle - Thank you, Judge.

1 The Court - All right, thank you, sir. You may
2 step down.

3 Mr. Brooks - That's the Respondent's case.

4 The Court - All right. I know y'all are feeling
5 like a yo-yo back and forth, but that's the end of the
6 Respondent's case, and so I have to take up matters of law
7 with the attorneys at the close of the Respondent's case.
8 So, I'm going to ask if you would, ladies and gentlemen,
9 to step back into your jury room. Please have no
10 conversation about the case and I'll bring you back out
11 shortly.

12 (Jury exits the courtroom)

13 The Court - All right, I'll take up any motions
14 at the close of all the evidence at this time.

15 Mr. Brooks - Thank you, Judge. We would
16 basically renew our motion for a directed verdict, and now
17 that you've heard all the evidence, including my client's
18 testimony, that the State's Petition should be dismissed
19 and my client be released based on the evidence that you
20 have here, Judge.

21 The Court - All right, I'm going to respectfully
22 deny that motion. I think -- just as earlier, I think
23 it's a jury question. I think it's up to the jury to give
24 whatever weight to the evidence they feel is appropriate.
25 I'm going to give the jury a few minutes, because they

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1 probably haven't gotten seated yet, so I have -- if y'all
2 want to look at it, I have printed out and in the front I
3 have also the verdict form so that if you want to just
4 take that and flip through it.

5 (Charge conference is held at the bench which
6 was not reported.)

7 (Discussion is held between the Court and the
8 Deputy Clerk regarding ordering lunch which was not
9 reported.)

10 The Court - All right, anyone need to use the
11 restroom or take a quick break, let's do that now and then
12 we'll get started.

13 Mr. Brooks - I think we are ready, Judge.

14 The Court - Are we ready? Okay. Ask the
15 members of the jury to join us, please.

16 (Jury enters the courtroom)

17 The Court - All right, ladies and gentlemen, I
18 think our exercise of musical chairs or treating you like
19 a yo-yo are about done. Ladies and gentlemen, we have
20 reached the portion of the trial where you've heard all
21 the evidence in the case from the witnesses and then any
22 exhibits which came in during the course of the trial. So
23 now it's time for the attorneys to have their opportunity
24 to address you with what we call closing arguments or
25 final summations. The -- what I told you about the

1 lawyers' opening statements yesterday also applies to
2 their closing arguments and that is this, what they tell
3 you in their closing arguments is not evidence. The
4 evidence is closed. The evidence is the testimony and the
5 exhibits, but this is their opportunity though to argue to
6 you what they believe the evidence in the case has shown
7 and so it's important that you give them your undivided
8 attention. The way that we do closing arguments in a
9 civil case such as this is, of course, the State has the
10 burden of proof, and so they will go first. Mr. Bogle
11 will address you first and then Mr. Brooks will have an
12 opportunity to address you on behalf of the Respondent,
13 and then if he chooses to, Mr. Bogle will have an
14 opportunity to wrap it up with a shorter closing remark if
15 he chooses to. He's not required to, but he certainly has
16 that right. Once they've concluded their remarks to you,
17 ladies and gentlemen, I will then charge you the law that
18 is applicable to this case and then it will be your case
19 to decide. Okay? So, if you would, please, give the
20 attorneys your undivided attention as they address you
21 with their closing arguments. Mr. Bogle?

22 Mr. Bogle - Thank you, Your Honor. May it
23 please the Court, --

24 The Court - Yes, sir.

25 Mr. Bogle - -- Mr. Brooks. Ladies and

1 gentlemen, I'm one of these lawyers -- unlike the guys on
2 tv, I've got to refer to notes. So if you could bear with
3 me a little bit on this. Here's where the hard work
4 begins. Okay? The attorneys have done their job. You've
5 heard all the evidence you're going to hear. You've heard
6 testimony. There's some exhibits introduced into evidence
7 you'll have back in the jury room. These are right here.
8 The question now is for you to decide the facts, what
9 happened in this case, how does it apply to Mr. Whitlock,
10 and should he be committed to a secure place for long-term
11 control, care and treatment. Now, let me start by telling
12 you what the General Assembly said when they wrote this
13 law back in 1998. They said the General Assembly finds
14 that a mentally abnormal and extremely dangerous group of
15 sexually violent predators exist who require involuntary
16 civil commitment in a secure facility for long-term
17 control, care and treatment. The General Assembly further
18 finds that the likelihood these sexually violent predators
19 will engage in repeated acts of sexual violence if not
20 treated for their mental conditions is significant.
21 That's how we got here. Now, remember the burden of
22 proof. It's very important here, because let's be honest,
23 what happens today could deprive Mr. Whitlock of further
24 liberty. If you find that he's a sexually violent
25 predator, he will be committed in a secure place run by

1 the Department of Mental Health for treatment. Each year
2 his case will be reviewed. He'll have a chance each year
3 to ask the Court, to say to the Judge, Judge, I'm
4 improved, I can get out, let me out. We have a hearing.
5 He has a right to petition the Court for release each. So
6 he's not forgotten about. But it is a secure place. But
7 remember we've got to prove to you this beyond a
8 reasonable doubt. Okay? And the Judge will explain to
9 you what that means in a few minutes. There's two things
10 we have to prove, the State has to prove. First, has he
11 been convicted of the right kind of crimes, sexually
12 violent crimes. Well, everybody agrees that he has. Dr.
13 Musick agrees. Dr. Mulbry agrees. I don't believe that's
14 in dispute. And the crimes are set forth in these
15 documents right here. We have the juvenile petitions.
16 That's the charging document in Family Court. It will be
17 an indictment if he was an adult in Circuit Court. So
18 that's what charged him with the crime. And then we have
19 the Court Order by the Family Court which finds him guilty
20 of three of those. Remember he was found guilty of three
21 of them, even though there's a total of five involved.
22 Okay? And it list the ones he was found guilty of. It
23 was criminal sexual conduct with a minor in the first
24 degree, which as Dr. Mulbry testified is the worst kind,
25 the highest kind of that kind of criminal sexual conduct.

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1 It involves violence; it involves penetrations. In his
2 case the victims were nine and ten years old and the
3 Respondent was twelve or thirteen. So it happened a long
4 time ago, and that's a factor here we have to take in
5 consideration. But also -- so we've got that. The next
6 question is, does he have some kind of mental abnormality
7 or personality disorder. Well, there's no question that
8 he's got one of them. He's got anti-social personality
9 disorder. Both doctors are in agreement on that. But the
10 question is, is that condition such that it makes him
11 likely to re-offend in the same manner if he's turned
12 loose. Dr. Mulbry says yes; Dr. Musick says no. But if
13 you look at what Dr. Musick looked at, what did he not
14 look at? His basic conclusion -- Dr. Musick -- his basic
15 conclusion was, because it's been so long since he's
16 offended, he's not likely to re-offend again. Remember
17 that scoring instrument that he used, the Static 99-
18 Revised? That is a test, a scoring instrument they use
19 that's commonly used by the psychiatric and psychology
20 profession in all of these cases. They use it over and
21 over again. And it's like he said, like going to your
22 doctor and saying I complain of these symptoms. Now, the
23 doctor knows that because of these symptoms you probably
24 have a certain kind of illness. Now, how does he know
25 that? Because thousands and thousands of people over the

1 years with those kind of symptoms have the same illness.
2 Well, that's what checked out here on Mr. Whitlock.
3 Because of certain things in his past, certain things he's
4 done, if you'd measure him against the thousands of sex
5 offenders in multiple countries, his chances of committing
6 another sexually violent crime again, he's worst than
7 ninety-nine percent of them. He scored that high. Dr.
8 Musick even said he's never had a guy score that high
9 where he recommended that he not be committed, and I think
10 his only reason for not recommending that he be committed
11 is it's been so long, but during that so long period,
12 think about where the Respondent's been. He's been at
13 DJJ. He's been at the Department of Corrections, and more
14 recently for the last couple of months he's been sitting
15 over at the York County jail behind you. Well, what's he
16 done when he's been there? Has he behaved? No. He tried
17 to escape once. He choked a person into unconsciousness.
18 He exposed himself repeatedly particularly a female
19 correctional officer, exposed -- DJJ, at the prison and at
20 the county jail. There's some anger there. There's some
21 sexual release that's just not being met. Now, he hadn't
22 been around -- he hadn't been around any nine or ten year
23 old boys, except for being in those group homes, those
24 visits he was talking about, but those were supervised.
25 There's no nine or ten year old victims in prison or at

1 the county jail, so would he re-offended against them had
2 they been available? You decide. You decide. What is it
3 that really turned Dr. Mulbry's opinion? The fact that
4 these sexual acts were accompanied by acts of physical
5 violence, choking, hitting, striking, forcing someone into
6 submission. The fact that he cannot control himself since
7 then as evidenced by all the misconduct, both at DJJ, the
8 prison and the jail. Did he get sex offender treatment?
9 Some. But remember part of it, he was in lockup so much,
10 the only way he could get sex offender treatment was, the
11 person doing it had to come to the jail and talk to him
12 through the bars, not because that's the way they wanted
13 to do it, but because of Mr. Whitlock's misconduct was so
14 frequent, he spent so much time in lockup, that's the only
15 way they could get to him. Was it effective? Doesn't
16 look like it. It doesn't seem to have taken. Even Dr.
17 Musick acknowledged that, because he still acts out in a
18 sexual manner even while he's locked up. And that's when
19 he's under control, within the iron bars of a secure
20 facility. What would it be like if he's not, and that's
21 where Dr. Mulbry has a problem. He says, if this guy's
22 cut loose without some kind of treatment in a secure place
23 where he can't get out until he's safe to be at-large,
24 can't have -- that just would not be a safe idea. It'd be
25 a risk. Who would be a risk I asked Dr. Mulbry. He said

1 the public, not just young boys, but the public in
2 general. There's been talk of community supervision and
3 a good support mechanism on the outside for him. Been
4 talk about it, but I would submit if you listened to the
5 testimony carefully, there's been no evidence of it. It's
6 been suggested that there'll be a good support mechanism,
7 but we don't know. He definitely will be on some kind of
8 supervision we think. Dr. Musick didn't inquire into it.
9 Is there sex offender treatment part of that supervision?
10 We seem -- the Respondent thinks so. Dr. Musick wasn't
11 sure. Has it been set up, though? I mean frankly, if the
12 guy's going to walk out of this courtroom today or
13 tomorrow or whenever we're through with him, I'd like to
14 think that he's going to a sex offender appointment
15 tomorrow morning, going to meet someone right away, but
16 no, that hadn't been set up yet. So that's where we are.
17 That's where we are. Has the State -- has our office
18 proven to you beyond a reasonable doubt that this man is
19 likely to re-offend in a sexually violent manner? Two
20 things. Has he been convicted of the right kind of
21 crimes? No question about that. Does he have a mental
22 abnormality or a personality disorder? No question about
23 that. Is it the kind that makes him likely to re-offend?
24 Look at the facts, make your own call. We would submit it
25 does. Thank you very much for your time. I appreciate

1 you taking the time out of your days and your jobs to
2 serve the county like this. Your Honor?

3 The Court - Thank you, Mr. Bogle. Mr. Brooks?

4 Mr. Brooks - Thank you, Judge, Mr. Bogle.

5 Ladies and gentlemen, this is the last time I will get to
6 address you and I want to thank you for sitting here on
7 this case the last day -- day and a half now and listening
8 to all the testimony including my client. I also have a
9 difference of opinion than my colleague, Mr. Bogle, and
10 I'd like to perhaps explain it to you more in laymen's
11 terms. What I mean by that is, remember, the State is the
12 one that has the burden. They have the burden of proving
13 their case beyond a reasonable doubt. But what is
14 reasonable doubt? Now, the Judge is going to charge you
15 that and tell you what it is with a certain legal jargon,
16 words and terminology, but I'd like to explain this to
17 folks in sort of laymen's terms. What do I mean by doubt?
18 Well, a lot of us this morning got up, planned to come to
19 work -- but in our case planned to come to Court and we
20 ended up pulling out our clothes and turning the iron on
21 and we iron them and we go on our merry way. And if we
22 get halfway down the road and we think, hey, did we turn
23 the iron off, well, now, we have a doubt in our mind as to
24 whether or not we turned the iron off. That's what I mean
25 by doubt, and it's a reasonable doubt. Well, in this case

1 I would submit to you that you have more than reasonable
2 doubt. You've got a young man who did some very heinous
3 things when he was twelve and thirteen. He said that on
4 the stand and you heard the doctors testify about that,
5 but there's been no incidents of sexual violence in that
6 time. Now, I understand that what he was convicted of was
7 very heinous. Bear in mind he was a child then, very, you
8 know, twelve, thirteen years old, and he's not making any
9 excuses for it, but what we're submitting to the Court is
10 he has not had sexual violence since that time, and I
11 think you can clearly see that in the difference between
12 what Dr. Mulbry testified to and what Dr. Musick testified
13 to. Dr. Musick also testified that that was in the
14 State's petition, not my petition, but the State's
15 petition that he is going to get community supervision as
16 a part of his release, and you heard Mr. Whitlock testify
17 to about what that community supervision is. Now, Mr.
18 Bogle made a point about well, you'd like to know if he's
19 got an appointment tomorrow, but bear in mind, he's still
20 been locked up. He don't whether tomorrow's coming.
21 Okay? So how is he going to make an appointment that is
22 going to be tomorrow when he doesn't know when he's going
23 to trial and when he's going to be released, because he's
24 still remaining detained. So bear in mind that that's not
25 necessarily fair to Mr. Whitlock. Keep in mind this young

1 man's now twenty-one; he's twenty-two years of age. He --
2 in his own way he was trying to eloquently articulate his
3 position that he has not engaged in sexually violent
4 behavior since he was twelve or thirteen years old. And
5 that's a fact. Dr. Mulbry testified to it; Dr. Musick
6 testified to it. You don't have -- this is not a crystal
7 ball. Okay? And what the State may try to hope you rely
8 on is the fact that he did these things -- it was so long
9 ago. Now, when he locked up, he got chances to do a lot
10 of other sexually violent things. I mean we all not
11 stupid; we not naive. We know what's going on in a lot of
12 these institutions. Okay? So there were plenty of
13 opportunities to engage in sexually violent behaviors with
14 other inmates. You don't have any reported incidents,
15 whether they were allegations, dismissals, convic -- you
16 don't have anything to say that he has continued this
17 behavior. You had a issue about public masturbation. You
18 had things about that that's going -- none of that's
19 violent. Now, a lot of that stuff may gross us out. You
20 may say, oh, he had a problem, but in the confines of this
21 courtroom, does that rise to the level that says this
22 guy's going to commit sexually violent crimes again in the
23 future? And I would submit to you, ladies and gentlemen,
24 that that is not here. Bear in mind it's been eight to
25 nine years. You've got basically two doctors who had a

1 difference of opinion in terms of their conclusion. We
2 would submit to you that the doctor who has done the most
3 of these, who works with mental health and has done more
4 of these is obviously one that you probably should rely on
5 more when making your decision that you're going to rely
6 on the expert, and he's the one that says I -- in my
7 opinion, I do not think that he fits that criteria. Now,
8 is O'Bryan Whitlock an angel? Is he a saint? No. We're
9 not submitting that to the Court, but bear in mind that
10 this is not a situation where we have to come in and prove
11 to you that he should be let go. They got to come in here
12 and prove to you beyond a reasonable doubt that he should
13 remain detained. And when I'm talking about a reasonable
14 doubt, I always -- like I said in the very beginning, I
15 like to be able to break it down to folks who don't come
16 in the courtroom, who don't deal with the legal business
17 that we as lawyers do, and I'll give you a picture of
18 reasonable doubt, another picture, and this might be a
19 little bit easier for you. If you picture a football
20 field -- and I know we got ladies on the jury, but I know
21 ladies know the basics of football. Okay? I know ladies
22 know the basics of football; I know the guys do. But
23 away, picture a football field. Reasonable doubt means
24 you get the ball into the end zone. The State has to get
25 the ball into the end zone, not get the ball across the

1 field, which might be preponderance of the evidence as we
2 call it in the legal business. They got to get the ball
3 in the end zone. We don't have to move the ball. So if
4 there's any tie, then the tie has to be resolved in favor
5 of Mr. Whitlock. As much as you may have heard some
6 nasty, grotesque things that have been testified yesterday
7 and today, the tie has to be resolved in Mr. Whitlock's
8 favor if you follow the law, which I'm sure, ladies and
9 gentlemen being the honorable, dutiful citizens of York
10 County you will. The tie has to go to Mr. Whitlock. So
11 we submit to you when you've got one doctor who's only
12 done twenty of these, another doctor who's done fifty-
13 three and who's now on the multi-disciplinary team, as Mr.
14 Bogle was asking him questions, so he -- obviously he's
15 much more entrically involved in the Sexual Violent
16 Predator Program, evaluation and things of that sort, who
17 gets up here and tells you, I review everything, I talk to
18 them, I'm aware of all these incidents and everything
19 about them, but in my opinion, as a qualified expert, he
20 does not meet that criteria, and he explains to you why,
21 then I submit to you that that's the opinion that you need
22 to rely on. And that's it. And if you do that and you
23 follow the law, no matter what our initial gut reaction
24 when we hear such heinous things, but if you listen to the
25 expert testimony and you follow the law and remember

1 beyond reasonable doubt, the State must prove -- Mr.
2 Brooks and Mr. Whitlock doesn't have to prove anything.
3 You follow that and the only conclusion you arrive at is
4 that they have not met their burden and my client does not
5 fit that criteria. Thank you.

6 Mr. Bogle - Nothing in reply. Thank you, Your
7 Honor.

8 The Court - All right, ladies and gentlemen, I'd
9 like to come around and give you the charge on the law.
10 During the time that the attorneys have been presenting to
11 you the evidence in this case, it's been appropriate for
12 me to sit back on the bench and just basically be out of
13 their way and let them do that, but we've now reached the
14 point of this trial where you and I are in this together,
15 you as the triers of the fact or the Judges of the facts
16 and me as the Judge of the law. So I think it's
17 appropriate that I come down and give you the charge on
18 the law. Now, I've put this charge in this notebook, and
19 Mr. Foreman, I'm going to send this notebook back into the
20 jury room so you'll have this in the back with you, but
21 I'm going to read the charge verbatim so that I don't mis-
22 speak or leave anything out. Mr. Foreman and ladies and
23 gentlemen of the jury, it is now my duty as the Trial
24 Judge under the Constitution of this State to charge and
25 instruct you on the law that is applicable to this case.

1 It is your duty as jurors to accept and to apply the law
2 as I will now state it to you. The State has brought this
3 case under the Sexually Violent Predator Law of South
4 Carolina. The State seeks civil commitment of the
5 Respondent for long-term control, care and treatment in a
6 secure facility. This is not a criminal proceeding
7 seeking incarceration, but rather it is a proceeding
8 seeking civil commitment. The State of South Carolina
9 alleges or claims that the Respondent O'Bryn Broschaw
10 Whitlock is a sexually violent predator under the law of
11 this State. The Respondent denies that he is a sexually
12 violent predator and the burden of proof is therefore on
13 the State to prove by evidence sufficient to satisfy each
14 of you beyond a reasonable doubt that the Respondent is a
15 sexually violent predator. If the State is unable to meet
16 that burden as to one or more of the elements of this
17 claim, the Respondent is entitled to a finding that he is
18 not a sexually violent predator. Ladies and gentlemen, I
19 want to make sure that you understand that the Respondent
20 is not accused of committing a crime in this proceeding.
21 As you have heard from the testimony, he did have previous
22 charges for which he was sentenced by the Court. The
23 Respondent has now completed his sentence for those
24 charges and the State is now alleging that the Respondent
25 is a sexually violent predator. The State has the burden

1 of proving in this case and must prove its case beyond a
2 reasonable doubt. If you find that the State has not met
3 this burden, the Respondent will be released. If you find
4 that the State has met its burden of proof and find that
5 the Respondent is a sexually violent predator, he will not
6 be released but will be committed to a secure treatment
7 facility in Columbia that is operated by the South
8 Carolina Department of Mental Health. Under South
9 Carolina law the Respondent will have the right to
10 petition the Court annually or each year for review of his
11 case to determine if he is safe to be at large and
12 unlikely to commit acts of sexual violence. Now, during
13 this trial you and I have separate duties to perform. As
14 a Trial Judge it is my responsibility to preside over this
15 trial, and I also have the duty to rule upon the
16 admissibility of the evidence offered during the process
17 of this trial. In that regard you are to consider only
18 the competent evidence before you and you are to disregard
19 from your mind any testimony ordered stricken from the
20 record in this case during the process of this trial if
21 there -- if there was any. You are to consider only the
22 testimony which has been presented from the witness stand,
23 together with any exhibits admitted into the record and
24 any stipulations of counsel made into the record if there
25 were any. Furthermore, you have the additional duty to --

1 excuse me -- I have the additional duty to charge you on
2 the law that is applicable for this case and in that
3 regard I am the sole Judge of the law in this case. It is
4 your duty to accept and to apply the law as I now state it
5 to you. If you have any preconceived ideas as to what the
6 law is or what you think the law ought to be and it does
7 not agree with what I tell you the law is, you are
8 obligated under your oath to abandon those preconceptions,
9 because you are sworn to accept the law precisely as I now
10 state it to you. In this trial you are the sole and
11 exclusive Judges of the facts. I am the Judge of the law.
12 Do not infer that I have any opinion about the facts in
13 this case from anything that I have said during the course
14 of this trial in ruling upon the admissibility of evidence
15 or otherwise or from anything that I now say during the
16 course of this charge to you. In this regard the law
17 simply does not permit me to have an opinion about the
18 facts. As jurors it is your duty alone to determine the
19 effect, value, weight and truth of the evidence presented
20 during the course of this trial. Ladies and gentlemen, in
21 most civil cases tried in this Court, the burden of
22 proving a claim is by the preponderance or the greater
23 weight of the evidence. However, in this type of case
24 under this particular statute, the State's burden is
25 greater than that. Here it must be proof beyond a

1 reasonable doubt. As already stated to you, the State has
2 the burden of proof. Under the law of this State,
3 according to the Sexually Violent Predator Statute, the
4 State must prove its case to the standard of proof that is
5 beyond a reasonable doubt. If the State fails to meet
6 this high burden, then you must find that Mr. Whitlock is
7 not a sexually violent predator. So what is a reasonable
8 doubt in the law? Proof beyond a reasonable doubt is
9 proof that leaves you firmly convinced that the Respondent
10 is a sexually violent predator as outlined in South
11 Carolina law. Ladies and gentlemen, there are very few
12 things in this world that we know with absolute certainty,
13 and in this type of case the law does not require proof
14 that overcomes every possible doubt. If based on your
15 consideration of the evidence you are firmly convinced
16 that the Respondent is a sexually violent predator, then
17 you must return a verdict for the State. If on the other
18 hand you think that there is a real possibility that he is
19 not a sexually violent predator, you must give him the
20 benefit of that doubt and return a verdict for the
21 Respondent. Reasonable doubt may arise from evidence that
22 is in this case or from the lack of evidence in this case.
23 It is up to you the jury to determine whether or not a
24 reasonable doubt exist in this case. Now, generally there
25 are two types of evidence which are presented during a

1 trial. There is direct evidence and there's
2 circumstantial evidence. Direct evidence is the testimony
3 of a person who claims to have actual knowledge of a fact
4 such as an eye-witness. It is evidence which immediately
5 establishes the main fact to be proved. Circumstantial
6 evidence is proof of a chain of facts and circumstances
7 indicating the existence of a fact. It is evidence which
8 immediately establishes collateral facts from which the
9 main fact may be inferred. In other words, circumstantial
10 evidence is based on inference and not on personal
11 knowledge or observation. Now, the law makes absolutely
12 no distinction between the weight or the value to be given
13 to either direct or circumstantial evidence, nor is there
14 a greater degree of certainty required of circumstantial
15 evidence than of direct evidence. In determining what the
16 facts in this case are, you must judge the credibility
17 which simply means believability of the witnesses and the
18 value of weight to be given to their testimony. You alone
19 must decide the force, effect and truth of that testimony.
20 In making this decision there are many things that you may
21 and should take into consideration, such as first, the
22 appearance and the manner of the witness on the witness
23 stand, the characteristic which is often referred to as
24 the demeanor of a witness; second, that the witness
25 forthright -- was the witness forthright or was the

1 witness hesitant; third, was the witness's testimony
2 consistent or did you find that it contained
3 discrepancies; what was the ability of the witness to know
4 the facts about which that witness testified; was there
5 some reason a witness would want to give testimony which
6 would help or hurt one side or the other, in other words,
7 was the witness's testimony biased or prejudiced; was the
8 testimony of the witness reasonable when considered in
9 light of all the evidence in the case and in light of your
10 experience and common sense; was the testimony of the
11 witness corroborated or made stronger by other testimony
12 and evidence, or was it made weaker or impeached by such
13 other testimony and evidence. As jurors, please
14 understand that you have the right to believe a small
15 portion of a witness's testimony and disregard the larger
16 portion or vice versa. You may believe all of the
17 testimony of a witness or none of the testimony. You may
18 believe all of the witness's testimony in one area and
19 disbelieve it in another area. You may believe the
20 testimony of a single witness against that of many or just
21 the other way around, and of course you do not determine
22 the truth merely by counting the number of witnesses
23 presented by each side. The fact that testimony is not
24 controverted does not mean that you must accept it as true
25 or undisputed. You still must gauge the credibility of

1 the witness to determine the believability or the truth of
2 the facts offered through that testimony. In exercising
3 your mental process and attempting to decide the truth,
4 the law simply requires that you exercise your good common
5 sense, your good judgment, your sense of logic and reason
6 and your experiences in life. You then apply these
7 attributes to the evidence and apply the law as I'm now
8 going to state it to you and thus arrive at your verdict.
9 Now, the rules of evidence ordinarily do not permit
10 witnesses to testify as to opinions or conclusions.
11 However, an exception to this rule exist for witnesses
12 that we call expert witnesses. A witness who has a
13 special knowledge or skill, experience, training or
14 education in a particular field may state an opinion as to
15 relevant and material matters in which the witness claims
16 to be an expert. In determining the weight to be given to
17 such an opinion, you should likewise consider the
18 qualifications and credibility of the expert and the
19 reasons given for the opinion. You are not bound by such
20 opinion, rather you should give it the weight, if any,
21 that you think it deserves. The value and effect of
22 expert testimony is a matter to be solely determined by
23 you the jury. No opinion of an expert can be accepted as
24 truthful or reliable in and of itself but must be weighed
25 by you and convince you beyond a reasonable doubt and with

1 the same force and effect as any other fact proved in this
2 case before you can rely on it. You must consider expert
3 testimony in the same manner as you do any other testimony
4 and give it such weight as you believe it is entitled when
5 considered with all other evidence in this case. Such
6 testimony is given for the purpose of helping you and not
7 for the purpose of controlling your judgment. Now, the
8 elements which the State must prove beyond a reasonable
9 doubt under the Sexually Violent Predator law are: that
10 the Respondent has been convicted of a sexually violent
11 offense; and I charge you that criminal sexual conduct
12 with a minor in the first degree is considered a sexually
13 violent offense under our code of laws; and, two, that the
14 Respondent suffers from a mental abnormality or
15 personality disorder that makes him likely to engage in
16 acts of sexual violence if not confined in a secure
17 facility for long-term control or care and treatment.
18 Those are the two elements. Inherent in these two
19 elements is that the State must prove the requirement that
20 the Respondent's mental abnormality or personality
21 disorder causes him serious difficulty in controlling his
22 behavior. In other words, the State must prove beyond a
23 reasonable doubt that the individual it seeks to commit
24 suffers from a mental illness which he cannot sufficiently
25 control without the structure and care provided by a

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1 mental health facility rendering him otherwise likely to
2 commit a dangerous act. In order for you to better
3 understand the elements of the State's cause of action, I
4 am going to define for you some of the terms that I have
5 just used. Mental abnormality means a mental condition
6 affecting a person's emotional or volitional capacity that
7 predisposes the person to commit sexually violent
8 offenses. This mental abnormality or personality disorder
9 must cause Mr. Whitlock serious difficulty in controlling
10 his behavior. The other term I used was likely to engage
11 in acts of sexual violence, and that means the person's
12 propensity to commit acts of sexual violence is one of
13 such degree as to pose a menace to the health and safety
14 of others so that he is dangerous to others. Again, I
15 remind you that the burden of proof is on the State to
16 prove to your satisfaction beyond a reasonable doubt that
17 the Respondent has been convicted of a sexually violent
18 offense as I have instructed you and that he also suffers
19 from a mental abnormality or personality disorder that
20 makes him likely to engage in acts of sexual violence if
21 not confined in a secure facility for long-term care,
22 control and treatment. If the State carries its burden of
23 proof and convinces you beyond a reasonable doubt as to
24 each of the two elements of this cause of action, then it
25 is entitled to a finding that Mr. Whitlock is a sexually

1 violent predator. If the State does not meet that burden
2 of proof as to both of these elements, then the Respondent
3 is entitled to a finding that he is not a sexually violent
4 predator. Now, ladies and gentlemen, I am drawing near to
5 the end of my charge. I want you to clearly understand
6 that you are not partisans or advocates for the State of
7 South Carolina or for the Respondent. You do not serve as
8 jurors to reward your friends or punish your enemies. In
9 this regard you have been selected by both the State and
10 by the Respondent to be fair and impartial jurors. It is
11 your duty by your joint deliberation to determine the
12 truth in this case giving the Respondent the benefit of
13 every reasonable doubt on each and every issue, then to
14 the facts which you determine to be true, you should take
15 and apply the law which has been given to you by this
16 Court and thus arrive at a verdict which speaks the truth
17 in this case. In fact, the word verdict comes from the
18 latin word veredicto which means a true saying. Thus,
19 when you have completed these responsibilities you will
20 have satisfied your oath as jurors and you will have
21 discharged your duty to the Court. There are two possible
22 verdicts which you may find in this case. One, that the
23 Respondent is a sexually violent predator, or two, that
24 the Respondent is not a sexually violent predator. There
25 is no significance whatsoever in the order in which I

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1 state these possible forms of verdict. It's simply that
2 one must be stated prior to the other one and there's no
3 significance to that order. All twelve of you must agree
4 on the verdict. Your jury (sic) must be unanimous. Your
5 verdict cannot be based on sympathy, passion, emotion or
6 any other consideration that is not in the evidence in
7 this case. Now, Mr. Foreman, when the jury agrees on the
8 verdict, the verdict form is in the front of this
9 notebook, if you'll just take that verdict form and you
10 will mark the correct spot reflecting the jury's decision
11 and then you will sign it as the foreman of the jury.
12 After you've done that, then you'll just knock on the door
13 and inform the bailiff that you've reached a verdict, and
14 we'll bring you out and receive the verdict. Now, I'm
15 going to ask you I think for the last time to retire to
16 your jury room, but do not begin your deliberations yet.
17 The law requires that I now consult with the attorneys to
18 make sure that I've not left anything out of these
19 instructions or that there's not any other matter that I
20 need to discuss with you before you begin your
21 deliberations. So I'm going to have that conversation
22 with the attorneys after you're excused, and if you'll
23 just hold off on deliberations until I finish. Once I
24 have finished with the attorneys, if I've left anything
25 out or I need to bring you back out, I'll do that, but if

1 not, if everything's good, we'll collect the exhibits
2 which came in during the course of the trial and we'll put
3 them with this notebook, and, Mr. Thompson, when you
4 receive those exhibits and this notebook, that'll be your
5 queue to begin your deliberations. Okay? What I'm going
6 to do is -- while I'm discussing the matters with the
7 attorneys, Madam Clerk is going to order lunch and we're
8 going to -- the county's going to -- you're going to have
9 lunch on the county today. They're to bring you lunch and
10 so we'll have that coming, so don't -- as you're back
11 there deliberating, don't worry that I haven't forgot you,
12 lunch is on the way. Okay? But if you would, please,
13 step back into the jury room and await these items.

14 (Jury exits the courtroom)

15 The Court - Are there any exceptions or
16 objections to the charge from the State?

17 Mr. Bogle - There are none, Your Honor.

18 The Court - Any from the Respondent?

19 Mr. Brooks - None from us, Judge.

20 The Court - If y'all will just go and check and
21 make sure that the exhibits that are there are appropriate
22 and the ones to go back and then we'll send them back.

23 (Counsel complies)

24 The Court - Then if y'all can take those
25 exhibits and that notebook and ask Ms. Crenshaw to step

1 out, the alternate.

2 (Alternate enters the courtroom and is released
3 by the Court)

4 The Court - All right, we'll just remain at ease
5 then while the jury's working.

6 (Jury deliberates at 12:25 p.m.)

7 (Court in recess awaiting verdict)

8 The Court - Thank you, ladies and gentlemen.
9 Please have a seat. It is my understanding that the jury
10 has reached a verdict. I have no idea what verdict that
11 is, but I tell people this all the time, those sitting in
12 the audience as well as to the parties, that I don't ever
13 ask people to agree with the jury's verdict. I just ask
14 that the jury's verdict be received in a professional
15 manner and in a respectful manner. I don't allow any, you
16 know, disturbances or displays of either joy or sadness
17 over their verdict. It's just -- they're twelve impartial
18 people and they see the case as they see it. Like I said,
19 I don't -- I don't ask anybody to agree with them, just to
20 be respectful. And I say that in civil cases; I say it in
21 criminal cases. And I tell folks that if you don't know -
22 - or if you don't know if -- or believe that you can
23 control your emotions, then you may want to step out,
24 because if there's any emotional outburst or any problems,
25 then I'm going to have -- I'm going to have the deputy

1 place you under arrest for contempt of Court. I don't --
2 it's important that the members of the jury not be made to
3 feel that either they've done a poor job or a good job.
4 It's not -- it's just important that their verdict be
5 received in a respectful manner. So if you have any
6 question as to your ability to control your emotions, you
7 may want to hear about it after it's been received, but if
8 not, then I'll expect everybody just to be respectful of
9 whatever verdict it is. I don't know what it is, but --
10 is the State ready to bring the jury out?

11 Mr. Bogle - Yes, Your Honor.

12 The Court - Respondent?

13 Mr. Brooks - Yes, sir.

14 The Court - All right. Ask the members of the
15 jury to join us, please.

16 (Jury returns to the courtroom with verdict at
17 2:10 p.m.)

18 The Court - All right, Mr. Thompson, has the
19 jury reached a unanimous decision, sir?

20 Mr. Thompson - Yes, Your Honor, we have.

21 The Court - All right, if you could please pass
22 that to the bailiff.

23 (Whereupon verdict is handed up to the Court)

24 The Court - All right, Madam Clerk, if you would
25 please publish the jury's verdict.

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1 Deputy Clerk - State of South Carolina, County
2 of York, in the matter of the care and treatment of
3 O'Bryan Broschaw Whitlock, case number 2011-CP-46-1081,
4 has the State of South Carolina proven beyond a reasonable
5 doubt that the Respondent, O'Bryan Broschaw Whitlock is a
6 sexually violent predator as defined under the South
7 Carolina Sexually Violent Predator Act? We the jury
8 unanimously answer the above styled question as, yes,
9 O'Bryan Broschaw Whitlock is a sexually violent predator,
10 signed this day by Todd L. Thompson, Foreman, May 15th,
11 2012. Ladies and gentlemen of the jury, if this be your
12 verdict, so say you all by raising your right hand.

13 (All jurors affirm their verdict)

14 Deputy Clerk - Thank you. Let the record
15 reflect all jurors affirm the verdict.

16 The Court - Thank you, Madam Clerk. Ladies and
17 gentlemen, I want to thank you for your service in this
18 case and for this week. I've got some good news for you.
19 We do have another case that we're going to need a jury's
20 assistance on, but we've got forty folks who are going to
21 come in at 2:30, so I'm going to excuse you for the
22 balance of the week, so your service has been concluded.
23 I will tell you that you've earned an exemption. I
24 believe probably Judge Alford addressed that with y'all on
25 Monday, that State law only requires that you serve on

1 jury duty once every three calendar years. So you have
2 that exemption. If you receive a jury summons for Circuit
3 Court in the next couple of years, if you want to be
4 exempt, you certainly can claim that exemption, but I will
5 tell you that it is just that. It's an exemption. It
6 doesn't mean that you're not qualified to serve, and so if
7 you do receive a notice and you do want to serve again, I
8 would encourage you to do so. I've never had the
9 opportunity to do what y'all have done here this week.
10 I'm fifty-seven years old, and I've never even been
11 summoned for jury duty except once in my life, and it was
12 about five years ago and it was a term of Court that I was
13 presiding over, so I -- you know, I just have never had
14 the opportunity to serve and it is a wonderful service
15 that you give to your community, and I want to thank you
16 on behalf of York County and the citizens here for your
17 work. As I said, we've got enough to handle the other
18 case we have, so that will conclude your service. Madam
19 Clerk, do they -- when they get their check it will have
20 a work excuse or do they need to go get one if they need
21 it?

22 Deputy Clerk - If they need one, I'll have -- I
23 can get them one.

24 The Court - Okay. If you need an excuse for
25 work, you can see the clerk's office and they'll get that

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1 for you. If not, then the old adage the check's in the
2 mail, they'll be mailing your checks to you. If it's
3 anything like -- I don't know it is up here in York, but
4 if it's anything like Florence County, I would ask that
5 you please not be offended when you get that check. It
6 probably won't pay for the gas you used to get over here,
7 but I tell folks all the time, you know, we couldn't
8 possibly pay you what your time's worth, because your time
9 is just very valuable, and jury service is not -- it's not
10 a paying job. It's a service that you give to your
11 community, so I want to let you know that that check is
12 not a reflection of what we think of your time. It is
13 just what the -- what the law provides that we can get
14 paid for jury service. Okay? So, thank you again, ladies
15 and gentlemen, and if there's nothing further, then I'm
16 going to excuse you for the balance of the week.

17 (Jury exits the courtroom)

18 The Court - Any motions?

19 Mr. Brooks - Judge, we would ask the Court to
20 set aside the verdict basically for the reasons we
21 outlined in our motion for directed verdict, as well as
22 the motion for directed verdict at the end of all the
23 testimony.

24 The Court - All right, Mr. Brooks. I'm going to
25 respectfully deny that. As I said earlier, and I think

1 it's the case here -- there was testimony that a jury
2 could go either way in this case, depending on how they
3 weighed the testimony, how they viewed one witness versus
4 the other witness, and again, I don't think there's
5 anything in the record that would reflect anything
6 inappropriate by the jury's decision. They gave the
7 weight to the testimony and it was, in fact, a unanimous
8 verdict, and I think it was appropriate under the facts as
9 they gave weight to the facts, so I'm going to
10 respectfully deny that motion.

11 Mr. Bogle - May I approach, Your Honor?

12 The Court - Yes, sir.

13 (Documents handed up to the Court)

14 (Bench conference was held which was not
15 reported.)

16 Mr. Brooks - Which one you going with, Judge?

17 The Court - The one where under subsection A
18 that it doesn't specifically name the disorder. It just
19 says, the Respondent is committed to the Department of
20 Mental Health for long-term control, care and treatment.
21 And, of course --

22 Mr. Bogle - What I'll do is I'll file this today
23 and get it to the sheriff -- a representative of the
24 sheriff's department. It'll be up to them to contact
25 mental health informing of a time to take him down there.

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1 Usually that happens pretty quickly. We always like to
2 have them call ahead just so they know the guy is coming.

3 The Court - All right, sir.

4 (Discussion is held between the Court and the
5 Deputy Clerk which was not reported)

6 The Court - All right, if Mr. Whitlock, do you
7 have any questions about anything, Mr. Brooks can answer
8 those questions for you. You'll have this opportunity to
9 talk with him about that. Okay? All right, that'll
10 conclude this matter.

11 (End of transcript)

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Certificate

I, Shirley G. Broom, the undersigned Court Reporter, hereby certify that the foregoing 186 pages constitute a true record of proceedings taken in the case of: In the Matter of the Care and Treatment of O'Bryan Broschaw Whitlock, as taken by me at the time and place stated.

I do further certify that the persons were present as stated, that I am not of Counsel for, related to, or in the employee of any of the parties to this action and that I have no interest whatsoever in the outcome of this case.

This the 28th day of Sept., 2012.


Shirley G. Broom
Circuit Court Reporter
Sixteenth Judicial Circuit

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	CASE NO. 2011-CP-46-01081
	)	
IN THE MATTER OF THE CARE	)	
AND TREATMENT OF	)	
O'BRYAN BROSCHAW	)	ORDER OF COMMITMENT
WHITLOCK,	)	
RESPONDENT.	)	

The trial of this case was held in the County of York in the Court of Common Pleas the week of May 14, 2012. A jury of citizens from York 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. Charles T. Brooks III, 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:

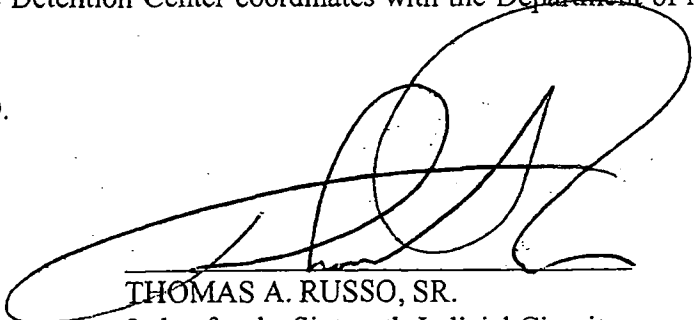
The State has proven beyond a reasonable doubt that Respondent, O'Bryan Broschaw Whitlock, is a sexually violent predator as that term is defined in S. C. Code Ann. Section 44-48-30.

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 York County Detention Center and transported, as soon as possible, to the secure facility of the South Carolina Department of Mental Health, at 4460 Broad River Road, Columbia, SC 29210. Transport of Respondent is to take place on such scheduled date as the Detention Center coordinates with the Department of Mental Health;

AND IT IS SO ORDERED.


THOMAS A. RUSSO, SR.

Judge for the Sixteenth Judicial Circuit
Court of Common Pleas

May 15th, 2012
York, South Carolina

FILED-RECEIVED
2012 MAY 15 PM 2:43
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

STATE OF SOUTH CAROLINA ⁹⁰ FILED-RECEIVED IN THE FAMILY COURT
SIXTEENTH JUDICIAL CIRCUIT

COUNTY OF YORK

2003 APR -7 AM 8:13

In the interest of:

DAVID HAMILTON
FAMILY COURT
YORK COUNTY, SC

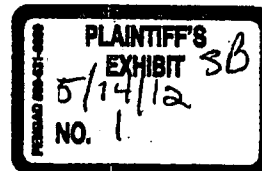
ORDER

O'BRYAN WHITLOCK

02 -JU-46- 623

03

119
285
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Hearing/Trial Date: April 1, 2003

Hearing/Trial Judge: H. Woods

Attorney for State: W. Payne

Attorney for Juvenile: A. Timothy Miller

Charge(s): CSC w/ Minor 1st #03-285; #03-286; #03-287;
and #03-288.

CSC 1st #02-623 (Red out)Defrauding on Druggies #03-119 (Red out)

And/Or,

Disposition on: _____

FINDINGS OF FACT

This comes before this court on a juvenile matter. A hearing was held before me for one or more of the following purposes:

☒ adjudication of the above charge(s).

☐ disposition of the above charge(s) after evaluation at the Department of Juvenile Justice (DJJ) Reception and Evaluation Center.

☐ disposition of the above charge(s) after a community evaluation.

☐ violation of juvenile's probation.

☐ contempt of court for violation of School Attendance Order.

☐ review of minor's probationary sentence.

☐ detention hearing on the above charge(s).

☒ In the hearing, the juvenile:

knowingly and voluntarily **admitted the following charges** after indicating that the juvenile did so upon advice of counsel with whom he/she is satisfied:

CSC w/ Minor 1st #03-285; 03-287; 03-288

Charge(s) nolle prosequi

CSC w/ Minor 1st #03-286

_____ knowingly and voluntarily **admitted violating his/her probation** after indicating that the juvenile did so upon advice of counsel with whom he/she is satisfied.

_____ knowingly and voluntarily **admitted contempt of court** after indicating that the juvenile did so upon advice of counsel with whom he/she is satisfied.

_____ **stood trial** on the charge(s) of: _____

CONCLUSIONS OF LAW

The State has shown beyond a reasonable doubt that the minor:

✓ _____ is delinquent by reason of the **plea of guilty**.

_____ is delinquent after having been **found guilty**.

_____ knowingly and willfully **violated the terms of his/her probation**.

_____ **disposition** of this matter as ordered below is in the minor's best interest.

_____ knowingly and willfully **violated the prior School Attendance Order**.

_____ there is probable cause to believe that the juvenile committed the above-referenced charge(s) and that the juvenile should be **detained** according to South Carolina Code of Laws Section 20-7-7210.

_____ there is probable cause to believe that the juvenile committed the above-referenced charge(s); however the juvenile should be **released** to the custody of his/her parent/guardian with conditions as specified below:

THEREFORE, IT IS ORDERED that the minor:

_____ be committed to the custody of the **RECEPTION AND EVALUATION CENTER** for up to 45 days for evaluation and shall be returned to this court for further disposition.

_____ be placed under a **SUSPENDED COMMITMENT TO THE RECEPTION AND EVALUATION CENTER** and ordered to comply with probation as set forth herein.

_____ shall get a **COMMUNITY EVALUATION** and shall be returned to this court for further disposition.

✓ _____ is committed to the custody of DJJ for an indeterminate period not to exceed his/her twenty-first (21) birthday.

_____ be placed under a **SUSPENDED COMMITMENT TO DJJ** and ordered to comply with probation as set forth herein.

_____ shall be given a **DETERMINATE SENTENCE** in a secure facility of DJJ for a period of _____. With this commitment, R&E is hereby waived and the juvenile must attend school while on the determinate sentence.

_____ shall be given a **DETERMINATE SENTENCE** at the Moss Justice Center for _____ 48 hour weekends.

_____ The weekend service should be served at the request of the juvenile's probation officer, but must no less than 48 hours on any weekend.

_____ The weekend service should be served as follows:

- begin _____ (date) at _____ p.m.
end _____ (date) at _____ p.m.
- begin _____ (date) at _____ p.m.
end _____ (date) at _____ p.m.
- begin _____ (date) at _____ p.m.
end _____ (date) at _____ p.m.

_____ shall be given a **SUSPENDED DETERMINATE SENTENCE** to DJJ for a period of _____.

_____ be **DETAINED** at the DJJ State Detention until disposition of this case or until released by the Court or until such time as another detention hearing may be held in the case at the request of the attorney for the juvenile.

_____ be **RELEASED FROM DETENTION** pending disposition of his/her case with one or more of any of the following conditions checked below:
_____ shall be placed on **PROBATION** under the supervision of DJJ for

_____ under the following terms:

_____ the minor shall be removed from the home and placed into the protective custody of the **Department of Social Services (DSS)**.

_____ the minor shall be placed in a **group home** or other approved facility and shall abide all rules of placement.

_____ the minor shall be referred to, accept, and complete placement at a **Marine Institute** and shall abide by all Marine Institute rules.

_____ the minor shall be on **house arrest** at the following address: _____

During this house arrest, the juvenile may not leave the home for any reason except to attend school, meet with his/her attorney or DJJ; seek medical attention, or attend church. This house arrest shall / shall not include **electronic monitoring**.

_____ the minor shall have a _____ P.M. **curfew** unless attending school, church, or some other activity approved by his/her parent(s), guardian(s) or DJJ.

_____ the minor shall cooperate with the completion of a **Community Psychological Evaluation**.

_____ the minor shall cooperate with counseling at the **Catawba Family Center** until released from the counselor.

_____ the minor shall cooperate with counseling at **Keystone** and follow any recommendations from that agency. The juvenile must also submit and pass random drug screens.

#3
thw

the minor shall cooperate with the **Teen Health Center**.
 the minor shall attend **Project Right Turn** at the time
 and date provided by DJJ.

the minor shall pay **restitution** in the amount of
 \$ _____ to the victim(s) _____

the minor shall write an **apology letter** to _____

the minor shall perform _____ hours of
community service at such times and places as
 directed by DJJ.

the minor shall pay a **fine** in the amount of \$ _____.

the minor shall participate in and complete the
conflict management program as specified by DJJ.

the minor shall participate in the **mentoring program**.

the minor shall **cooperate with an Auxiliary Probation
 Officer** when one becomes available.

the minor shall be **restrained** from any contact with the
 following individuals: _____

the minor's case shall be set for a **review** of probation
 by the Court in _____ days.

**IF ADJUDICATED DELINQUENT OR RELEASED FROM
 DETENTION AWAITING DISPOSITION OF HIS/HER CASE, THE
 JUVENILE MUST ALSO ABIDE BY THE FOLLOWING:**

- the minor shall report to his/her probation counselor as directed and cooperate with the requirements of his/her probation counselor.
- the minor shall not possess or use alcohol, drugs, or illegal weapons or be in the presence of persons who are using or possessing the same or be on premises where alcohol is served.
- the minor shall not commit any criminal or delinquent acts or be in the presence of other persons committing a crime or otherwise breaking the law.
- the minor shall attend school, adult education, or some other educational program approved by DJJ and must be on time for each class and shall obey all school rules.
- the minor shall not leave the State of South Carolina for any reason without permission of the probation counselor.

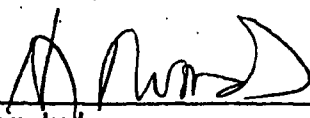
- The minor's parent(s) or guardian(s) shall immediately report to DJJ any violation by the minor of the terms of this Order:
- the minor shall be restrained from contact with any victims in the matter.
- If the juvenile is released on House Arrest and is picked up in violation of House Arrest, he/she may be taken to DJJ State Detention Facility and held up to ten (10) days until a detention hearing may be held in the matter.
- If the juvenile is residing with his/her parent or guardian, he/she shall abide by all rules of the home, and shall not leave home without permission.
- If the juvenile has been adjudicated delinquent of a crime as enumerated in The South Carolina Code of Laws Section 23-3-620 the juvenile must submit to Deoxyribonucleic Acid (DNA) testing.
- If the juvenile has been screened by the Clerk of Court for representation in this case, juvenile shall pay an application fee of \$40 to the Clerk of Court for application for a public defender in this case.

Other: The Court having access to prior R+E
and Community Evaluations hereby waives R+E
evaluation.

***THE PERIOD OF ANY PROBATIONARY SENTENCE SHALL BE AUTOMATICALLY EXTENDED IF COURT-ORDERED RESTITUTION HAS NOT BEEN PAID IN FULL AND/OR UNTIL THE JUVENILE HAS SUCCESSFULLY COMPLETED ANY AND ALL STIPULATED PROGRAMS. THE PERIOD OF THE EXTENSION SHALL BE FOR AN ADDITIONAL 60 DAYS UNLESS OTHERWISE SPECIFIED BY THE COURT.

#5 AND IT IS SO ORDERED.

April 1, 2003
 Rock Hill, South Carolina


 Presiding Judge
 Sixteenth Judicial Circuit

DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, SC

order.yk rev 03/03

2012 MAY -9 PM 3:36

CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA
COUNTY OF YORK

FILED-RECEIVED IN THE FAMILY COURT
SIXTEENTH JUDICIAL CIRCUIT

2003 MAR 14 AM 9:52

03 - JU - 46 - 285

OUIDA SWANN DEST, Petitioner
WHITNEY J. PAYNE, Petitioner

DAVID HAMILTON
FAMILY COURT
YORK COUNTY, SC

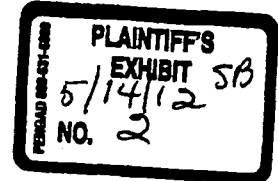
JUVENILE PETITION

IN THE INTEREST OF:

OBRYAN B WHITLOCK

CRIMINAL SEXUAL CONDUCT WITH MINOR 1ST
DEGREE

D.O.B.:



Ouida Swann Dest or Whitney J. Payne, the petitioner, having sufficient knowledge to believe that a case has arisen which invokes the juvenile jurisdiction of the court alleges:

1. That the above named juvenile resides in or was found in York County.
2. That the names and addresses of the child's parents/guardians/custodians are as follows:

Name	Relationship	Address
PHYLLIS WHITLOCK	MOTHER	SAME
3. The above-named juvenile was a delinquent child, in that on or about January 30, 2003, in York County, S.C. he/she did wilfully and unlawfully engage in a sexual battery with one Child 1 a minor nine years of age,
4. That the above-named juvenile was less than seventeen (17) years of age when the above mentioned acts occurred.

WHEREFORE, the petitioner prays that the court determine whether these allegations are true and whether the juvenile is in need of the care, protection, or discipline of the State.

Whitney J. Payne
Petitioner

Ouida Swann Dest or Whitney J. Payne being duly sworn, says that she is the Petitioner herein, and that she has read the foregoing Petition and knows the contents hereof; that the same is true of her knowledge, except as to the matter therein stated to be alleged on information and belief; and as to the matters she believes them to be true.

Whitney J. Payne
Petitioner

SWORN AND SUBSCRIBED BEFORE ME THIS
14 DAY OF March, 2003

Mami Frances Burn
Notary Public for South Carolina
My Commission Expires 2/6/2008

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

2012 MAY -9 PM 3:36

CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA
COUNTY OF YORK

OUIDA SWANN DEST, Petitioner
WHITNEY J. PAYNE, Petitioner

IN THE INTEREST OF:

OBRYAN B WHITLOCK

D.O.B.:

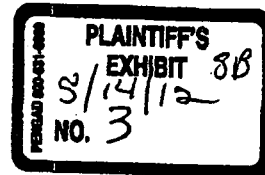
IN THE FAMILY COURT
FILED-RECEIVED SEVENTEENTH JUDICIAL CIRCUIT

2003 MAR 14 AM 9:52

03 - JU - 46 - 286

DAVID HAMILTON JUVENILE PETITION
FAMILY COURT
YORK COUNTY, SC

CRIMINAL SEXUAL CONDUCT WITH MINOR 1ST
DEGREE



Ouida Swann Dest or Whitney J. Payne, the petitioner, having sufficient knowledge to believe that a case has arisen which invokes the juvenile jurisdiction of the court alleges:

1. That the above named juvenile resides in or was found in York County.
2. That the names and addresses of the child's parents/guardians/custodians are as follows:

Name	Relationship	Address
PHYLLIS WHITLOCK	MOTHER	SAME
3. The above-named juvenile was a delinquent child, in that on or about January 30, 2003, in York County, S.C. he/she did wilfully and unlawfully engage in a sexual battery with one Child 1 a minor nine years of age.
4. That the above-named juvenile was less than seventeen (17) years of age when the above mentioned acts occurred.

WHEREFORE, the petitioner prays that the court determine whether these allegations are true and whether the juvenile is in need of the care, protection, or discipline of the State.

[Signature]
Petitioner

Ouida Swann Dest or Whitney J. Payne being duly sworn, says that she is the Petitioner herein, and that she has read the foregoing Petition and knows the contents hereof; that the same is true of her knowledge, except as to the matter therein stated to be alleged on information and belief; and as to the matters she believes them to be true.

[Signature]
Petitioner

SWORN AND SUBSCRIBED BEFORE ME THIS
14 DAY OF March, 2003

Mamie Frances Burn
Notary Public for South Carolina
My Commission Expires 2/1/2009

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

2012 MAY -9 PM 3:36

CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA
COUNTY OF YORK

OUIDA SWANN DEST, Petitioner
WHITNEY J. PAYNE, Petitioner

IN THE INTEREST OF:
OBRYAN B WHITLOCK

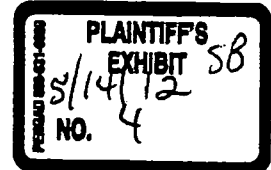
D.O.B.:

IN THE FAMILY COURT
FILED-RECEIVED SIXTH JUDICIAL CIRCUIT

2003 MAR 14 AM 9:52 03 - JU - 46 - 287

DAVID HAMILTON JUVENILE PETITION
FAMILY COURT
YORK COUNTY, SC

CRIMINAL SEXUAL CONDUCT WITH MINOR 1ST
DEGREE



Ouida Swann Dest or Whitney J. Payne, the petitioner, having sufficient knowledge to believe that a case has arisen which invokes the juvenile jurisdiction of the court alleges:

1. That the above named juvenile resides in or was found in York County.
2. That the names and addresses of the child's parents/guardians/custodians are as follows:

Name	Relationship	Address
PHYLLIS WHITLOCK	MOTHER	SAME
3. The above-named juvenile was a delinquent child, in that on or about February 05, 2003, in York County, S.C. he/she did wilfully and unlawfully engage in a sexual battery with one Child 2 a minor ten years of age,
4. That the above-named juvenile was less than seventeen (17) years of age when the above mentioned acts occurred.

WHEREFORE, the petitioner prays that the court determine whether these allegations are true and whether the juvenile is in need of the care, protection, or discipline of the State.

Whitney J. Payne
Petitioner

Ouida Swann Dest or Whitney J. Payne being duly sworn, says that she is the Petitioner herein, and that she has read the foregoing Petition and knows the contents hereof; that the same is true of her knowledge, except as to the matter therein stated to be alleged on information and belief; and as to the matters she believes them to be true.

Whitney J. Payne
Petitioner.

SWORN AND SUBSCRIBED BEFORE ME THIS
14 DAY OF March, 2003

Marie Frances Burn
Notary Public for South Carolina
My Commission Expires 2/1/2008

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

2012 MAY -9 PM 3:36

CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA
COUNTY OF YORK

OUIDA SWANN DEST, Petitioner
WHITNEY J. PAYNE, Petitioner

IN THE INTEREST OF:
OBRYAN B WHITLOCK

D.O.B.:

FILED-RECEIVED IN THE FAMILY COURT
SIXTEENTH JUDICIAL CIRCUIT

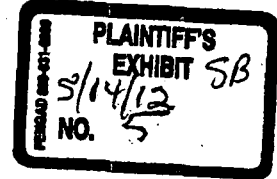
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03 - JU - 46 - 288

DAVID HAMILTON
FAMILY COURT
YORK COUNTY, SC

JUVENILE PETITION

CRIMINAL SEXUAL CONDUCT WITH MINOR 1ST
DEGREE



Ouida Swann Dest or Whitney J. Payne, the petitioner, having sufficient knowledge to believe that a case has arisen which invokes the juvenile jurisdiction of the court alleges:

1. That the above named juvenile resides in or was found in York County.
2. That the names and addresses of the child's parents/guardians/custodians are as follows:

Name	Relationship	Address
PHYLLIS WHITLOCK	MOTHER	SAME
3. The above-named juvenile was a delinquent child, in that on or about February 14, 2003, in York County, S.C. he/she did wilfully and unlawfully engage in a sexual battery with one Child 3 a minor nine years of age,
4. That the above-named juvenile was less than seventeen (17) years of age when the above mentioned acts occurred.

WHEREFORE, the petitioner prays that the court determine whether these allegations are true and whether the juvenile is in need of the care, protection, or discipline of the State.

Whitney J. Payne
Petitioner

Ouida Swann Dest or Whitney J. Payne being duly sworn, says that she is the Petitioner herein, and that she has read the foregoing Petition and knows the contents hereof; that the same is true of her knowledge, except as to the matter therein stated to be alleged on information and belief; and as to the matters she believes them to be true.

Whitney J. Payne
Petitioner

SWORN AND SUBSCRIBED BEFORE ME THIS
14 DAY OF March, 2003

Mamie Frances Burn
Notary Public for South Carolina
My Commission Expires 2/6/2009

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

2012 MAY -9 PM 3:36

CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA

COUNTY OF YORK

OUIDA SWANN DEST, Petitioner
WHITNEY J. PAYNE, Petitioner

IN THE INTEREST OF:

OBRYAN B WHITLOCK

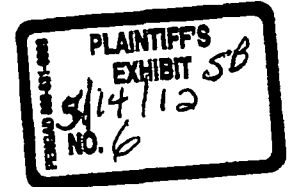
D.O.B.:

IN THE FAMILY COURT
SIXTEENTH JUDICIAL CIRCUIT

02 - JU - 46 - 623

JUVENILE PETITION

CRIMINAL SEXUAL CONDUCT 1ST



Ouida Swann Dest or Whitney J. Payne, the petitioner, having sufficient knowledge to believe that a case has arisen which invokes the juvenile jurisdiction of the court alleges:

1. That the above named juvenile resides in or was found in York County.
2. That the names and addresses of the child's parents/guardians/custodians are as follows:

<u>Name</u>	<u>Relationship</u>	<u>Address</u>
PHYLLIS WHITLOCK	MOTHER	SAME
3. The above-named juvenile was a delinquent child, in that on or about June 14, 2002, in York County, S.C. he/she did wilfully and unlawfully commit the crime of Criminal Sexual Conduct in the First Degree, in that the Defendant did commit a sexual battery upon one Child 4 without his consent and by means of aggravated force and coercion, Said incident occurred in York County, South Carolina. All in violation of Section 16-03-655, Code of Laws of South Carolina, (1976, as amended).
4. That the above-named juvenile was less than seventeen (17) years of age when the above mentioned acts occurred.

WHEREFORE, the petitioner prays that the court determine whether these allegations are true and whether the juvenile is in need of the care, protection, or discipline of the State.

Petitioner

Ouida Swann Dest or Whitney J. Payne being duly sworn, says that she is the Petitioner herein, and that she has read the foregoing Petition and knows the contents hereof; that the same is true of her knowledge, except as to the matter therein stated to be alleged on information and belief; and as to the matters she believes them to be true.

Petitioner

SWORN AND SUBSCRIBED BEFORE ME THIS
19 DAY OF June, 2002

Notary Public for South Carolina
My Commission Expires 2/6/2008

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

2012 MAY -9 PM 3:36

CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF YORK) CASE NO. 2011-CP-46-01081
) (NON-JURY)
 IN THE MATTER OF THE CARE)
 AND TREATMENT OF) PROBABLE CAUSE ORDER
 O'BRYAN BROSCAW)
 WHITLOCK,)
 RESPONDENT.)

FILED-RECEIVED
 2011 MAR 31 AM 11:35
 DAVID H. HILTON
 C.C.P. & G.S. SC
 YORK COUNTY

IT APPEARING FROM the petition filed by the State of South Carolina that there is probable cause to believe that the Respondent meets the criteria of sexually violent predator pursuant to statute, and that the State of South Carolina has established sufficient evidence to require that the Respondent be taken into custody and confined in a secure facility, and that a hearing be held to allow Respondent to contest probable cause as to whether Respondent is a sexually violent predator;

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

1. If Respondent is not in custody in a secure facility, Respondent shall be taken into custody by the Sheriff of any county in which the Respondent may be found and shall be transferred to the custody of the Sheriff of York County and shall be confined in the York County Detention Center pending the probable cause hearing;

2. Respondent shall be personally served by the agency having custody of the Respondent with copies of the Petition filed in this action and this Order, as notice to the Respondent of this proceeding and of his opportunity to be heard;

3. A hearing shall be held before the Court within 72 hours after Respondent has been taken into custody, if he is not already in custody, to allow Respondent to contest probable cause exists to Order that Respondent remain in custody and be evaluated by an appointed expert;

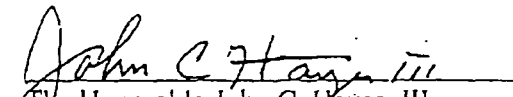
4. The Clerk of Court for York County shall appoint the next available attorney qualified to accept court-appointed indigent cases in York County, to represent the Respondent at the aforementioned hearing and until further Order of the Court. The Clerk of Court shall notify said attorney of the appointment promptly; and

5. Counsel for the State shall ensure that Respondent is transported to Court for the hearing on the date and time of the hearing as will be set by the Court.

JCH
 #1

AND IT IS SO ORDERED.

3/24, 2011
York, South Carolina

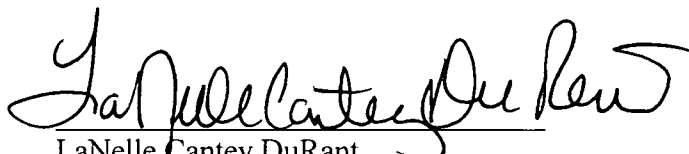

The Honorable John C. Hayes, III.
Chief Administrative Judge for the Sixteenth
Judicial Circuit Court of Common Pleas

#2

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."

6th day of May, 2013,



LaNelle Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from York County

Thomas A. Russo, Circuit Court Judge

RECEIVED
MAY 06 2013
SC Court of Appeals

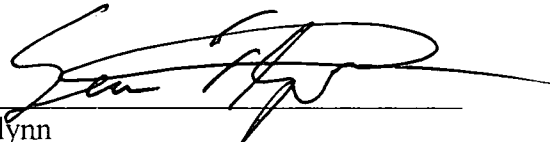
IN THE MATTER OF THE CARE AND
TREATMENT OF O'BRYAN B. WHITLOCK,

APPELLANT

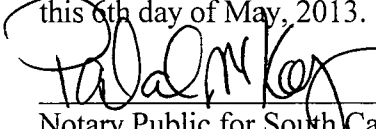
APPELLATE CASE NO. 2012-212021

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 6th day of May, 2013.


Sean Flynn
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 6th day of May, 2013.


Notary Public for South Carolina

(L.S.)

My Commission Expires: July 24, 2022