

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

In the Matter of the Care and Treatment of Ronald Owen

Appellate Case No.: 2013-000217

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Honorable Frank R. Addy, Jr., Circuit Court Judge
Trial Court Case No.: 2009CP3600319

RECORD ON APPEAL

Tommy A. Thomas
SC Bar No.: 005536
Attorney for Appellant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Alan Wilson
Attorney General

Deborah R.J. Shupe, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

RECEIVED

OCT 03 2013

SC Court of Appeals

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STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)
)
IN THE MATTER OF THE CARE)
AND TREATMENT OF)
RONALD OWEN;)
)
RESPONDENT.)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-36-00319

**AMENDED ORDER DENYING 2012
PETITION FOR RELEASE/
ANNUAL REVIEW TRIAL**

FILED
NEWBERRY COUNTY
2012 APR 17 A 10:43
JAMES S. POWERS
CLERK OF COURT

This matter came before the Court on petition of the Respondent, Ronald Owen, for an order finding that there is probable cause to believe that Respondent's mental abnormality or personality disorder has so changed that he is safe to be at large and, if released, is not likely to commit acts of sexual violence, and for an order requiring a trial on that issue pursuant to S. C. Code Ann. Section 44-48-110. An Annual Review hearing was held in the Newberry Court of Common Pleas pursuant to that statute on March 13, 2012. Respondent was present along with his attorney Tommy Thomas, of Lexington. The State of South Carolina was represented by Senior Assistant Attorney General James G. Bogle, Jr.

In this case Respondent had exercised his right to obtain an independent evaluation, and testimony on his behalf to that effect was received from Dr. William Burke, of Summerville. In response the State presented testimony from Dr. Marie E. Gehle, Chief Psychologist at the Department of Mental Health, who authored the Department's Annual Review Treatment Report on Respondent, dated March 31, 2011, which was entered into evidence.

Respondent asserted that he can be more appropriately treated as an outpatient without the necessity of a 24-hour secure environment as provided by the Sexually Violent Predator Treatment Program. Dr. Burke testified that Mr. Owen had acclimated well to the SVP program but has not been afforded treatment that meets the standards of care as established by the Association for the Treatment of Sexual Abusers. Dr. Burke currently provides a treatment program for sexual offenders and was willing to accept Mr. Owen into this program. Dr. Gehle stated that she thought that the Respondent was receiving therapy for at least one and a half hours per week, and was involved in other groups.

Dr. Burke further testified that Mr. Owen could safely be released into the community and that he could receive appropriate treatment outside of confinement. However, he added the stipulation that Mr. Owen should be under court order, and be recommitted to the SVP program if he was non-compliant in the out-patient program.

The Court takes notice that Respondent has no probation associated with his previous sentence. The Court would, therefore, have no ability to recommit Mr. Owen to the SVP Program for failure to attend an outpatient program. Dr. Burke testified that it was his belief that Respondent could be ordered or committed to inpatient treatment pursuant to S. C. Code Ann.

1


EXHIBIT 1

Section 44-17-580 of the South Carolina Probate Code. Argument was made that Mr. Owen could be court-ordered to out-patient treatment or hospitalization if:

- A) The person is mentally ill, needs involuntary treatment, and because of his condition
1. Lacks sufficient insight or capacity to make responsible decisions with respect to this treatment, or
 2. There is a likelihood of serious harm to himself or others.

Argument was further made under Section 44-17-580 that if the Court ordered out-patient treatment and Respondent failed to adhere to the prescribed out-patient treatment order or program, the treatment facility shall report the failure to the Court and the Court upon notice to the respondent and his counsel shall order a supplemental hearing, and may further order in-patient treatment in a designated facility as needed. After review, it is the finding of the Court that Respondent's release, or lack of release, must fall within the parameters of the Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.* The Probate Code would not offer the safeguard of that Act.

Testimony from Dr. Gehle was that the Respondent had a diagnosis of Pedophilia, sexually attracted to both, limited to incest, nonexclusive type and personality disorder, not otherwise specified. It appears that Dr. Burke did not disagree with this diagnosis.

Respondent's argument was that he could be safely released to enter a more intensive outpatient program with the stipulation that he could be recommitted through Section 44-17-580 if he was non-compliant. The Court is concerned that Dr. Burke did not testify that Mr. Owen's condition had so changed that he was safe to be at large and if released was not likely to commit acts of sexual violence. And that is the standard of proof at an Annual Review hearing under S. C. Code Ann. Section 44-48-110.

Based on the record and the testimony, the Court hereby finds and concludes that the Respondent Ronald Owen has not made sufficient progress in treatment at the Sexually Violent Predator Treatment Program where he has been since his commitment on or about February 3, 2010, to justify his release or a trial on that issue. The Court has considered the showing made in respect to this matter and finds and concludes that the Respondent has failed to show probable cause that his mental abnormality or personality disorder has so changed such that he is safe to be at large and, if released, is not likely to commit acts of sexual violence. His petition is denied and no order requiring a trial shall be ordered on that issue.

Accordingly,

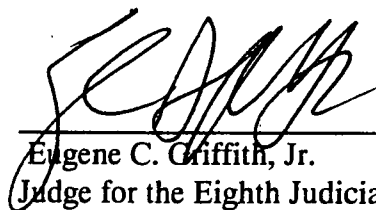
IT IS THEREFORE ORDERED that the Respondent, Ronald Owen, shall continue to be confined in a secure facility of the Department of Mental Health for long term control, care and treatment pursuant to the Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*



IT IS FURTHER ORDERED that the Respondent continues under the jurisdiction of this Court.

AND IT IS SO ORDERED.

April 17th, 2012
Newberry, South Carolina



Eugene C. Griffith, Jr.
Judge for the Eighth Judicial Circuit

STATE OF SOUTH CAROLINA)
)
 COUNTY OF NEWBERRY)
)
 IN THE MATTER OF THE CARE)
 AND TREATMENT OF)
 RONALD OWEN,)
 PETITIONER.)
 _____)

IN THE COURT OF COMMON PLEAS
 EIGHTH JUDICIAL CIRCUIT
 CASE NO. 2009-CP-36-00319
 ORDER DENYING 2012 PETITION FOR
 RELEASE/ANNUAL REVIEW

FILED
 NEWBERRY COUNTY
 2013 JAN -9 A 10:52
 JACKIE BOWERS
 CLERK OF COURT

The Respondent State of South Carolina, by and through the South Carolina Attorney General's Office, has moved pursuant to S.C. Code Ann. Section 44-48-130, for an Order denying the petition for release/annual review. This Court agrees, and makes the following findings:

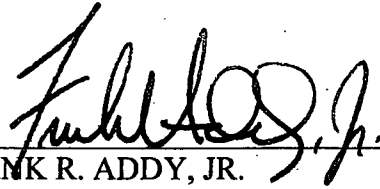
1. The matter is before the court on an annual review/petition for release, under S. C. Code Ann. Section 44-48-110.
2. Petitioner was committed to the Department of Mental Health (hereafter, DMH) under the Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.* on or about February 3, 2010.
3. Petitioner petitioned for release in his 2011 Annual Review, without the approval of the Director of the Department of Mental Health, a contested annual review hearing was held, at which Dr. Marie E. Gehle of the Department testified that there was insufficient basis to conclude Petitioner's mental abnormality has so changed that he was safe to be at large and no longer likely to engage in acts of sexual violence. Petitioner's Annual Review was denied, and he was ordered to remain in the custody of the Department of Mental Health, by order filed April 17, 2012.

4. Pursuant to Petitioner's Annual Review and Notice of Right to Petition for Release, dated on or about December 4, 2012, Petitioner again sought release without the approval of the Director of the Department of Mental Health. The accompanying Annual Review Treatment Report by psychologist Dr. Gehle stated that there was insufficient basis to conclude Petitioner's mental abnormality had so changed that he was now safe to be at large and no longer likely to engage in acts of sexual violence.
5. S. C. Code Ann. Section 44-48-130 provides that if a person has previously filed a petition for release without the approval of the Director of the Department of Mental Health, and the Court determined following a hearing that the petitioner's condition had not changed so he was safe to be at large and, if released, was not likely to commit acts of sexual violence, then the Court must deny any subsequent petition for release as frivolous, without a hearing, unless the subsequent petition contains facts upon which a Court could find the condition had changed so that a hearing was warranted.
6. Given Petitioner's prior petition for release without the approval of the Director of the Department, the denial of that petition, and the lack of evidence of sufficient progress in treatment to show that his mental abnormality has so changed that he is safe to be at large, Petitioner's pending petition for release is frivolous, and should be denied pursuant to S. C. Code Ann. Section 44-48-130 without a hearing.

Accordingly,

IT IS HEREBY ORDERED that the 2012 petition for release/annual review be
and hereby is denied.

AND IT IS SO ORDERED.



FRANK R. ADDY, JR.
Circuit Court Judge for the Eighth Judicial
Circuit Court of Common Pleas

Dec. 21, 2012
Greenwood, South Carolina

CASE NO. 2009-CP-36-319

State of South Carolina

In re the Manner and Treatment of Ronald Owen

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for	<input type="checkbox"/> Plaintiff	<input type="checkbox"/>
	Defendant	<input type="checkbox"/> Self-Represented Litigant	

Disposition Type (Check One)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: This motion comes before the Court on a motion for reconsideration of the court's order dated December 21, 2012. Mr. Owen, by and through his counsel of record, move for reconsideration. The court denies Mr. Owen's motion for reconsideration for the reasons outlined in the State's return.

Order Information

This order ends does not end the case.

Additional Information for the Clerk : _____

Complete if judgment requires payment of a sum of money or affects title to real or personal property			
JUDGMENT AGAINST PLAINTIFF:		JUDGMENT AGAINST DEFENDANT:	
Judgment Amount	\$ _____	Judgment Amount	\$ _____
Taxable Costs	\$ _____	Taxable Costs	\$ _____
Attorney's Fees	\$ _____	Attorney's Fees	\$ _____
Interest	\$ _____	Interest	\$ _____
Other:	\$ _____	Other:	\$ _____
Total Amount to be Enrolled:	\$ _____	Total Amount to be Enrolled:	\$ _____
If applicable, describe the property, including tax map information and address, referenced in the order:			

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interests or costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

000008

Paul D. Bogle, Jr.

Circuit Court Judge

2157
Judge Code

1/23/13
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Jim Bogle, Jr., Esq.

Tommy A. Thomas, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT



State of South Carolina
Department of Mental Health

MENTAL HEALTH COMMISSION:

Alison Y. Evans, PsyD, Chair
 Joan Moore, Vice Chair
 Jane B. Jones
 Everard Rutledge, PhD
 J. Buxton Terry

STATE DIRECTOR

John H. Magill

Division of Inpatient Services
Sexually Violent Predator Treatment Program
 7901 Farrow Road, Building #3
 Columbia, SC 29203
 Information: (803) 935-5751

December 4, 2012.

The Honorable Frank R. Addy, Jr.
 Chief Administrative Judge
 Eighth Judicial Circuit
 528 Monument St., Suite 210
 Greenwood, SC 29646

Re: Owen, Ronald
 Case No: 09-CP-36-0319

Dear Judge Addy:

Mr. Ronald Owen was committed to the South Carolina Department of Mental Health, Sexually Violent Predator Program, on February 3, 2010, pursuant to SC Code of Laws §44-48-100, Sexually Violent Predator Act.

Pursuant to SC Code of Laws §44-48-110, "The court shall conduct an annual hearing to review the status of the committed person." Therefore, please find enclosed the required documents in order to conduct such a hearing:

1. Annual Examination and Review Hearing, Annual Notice of Right to Petition for Release and Elections to Waive or Exercise Rights form.
2. Annual Treatment Review Summary, dated November 26, 2012.

MISSION STATEMENT

To support the recovery of people with mental illnesses.

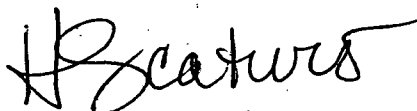
000010

Based on our re-evaluation of Mr. Owen, it is our recommendation, to the Courts, that Mr. Owen remain in inpatient treatment in the South Carolina Department of Mental Health, Sexually Violent Predator Program.

The Attorney General's Office will contact you if a hearing needs to be scheduled to address Mr. Owen's review hearing.

If I can be of further assistance to the Court, please feel free to contact me or Ms. Cathy B. Garner, Paralegal, (803) 935-5540.

Respectfully,



Holly Scaturro
Director
Sexually Violent Predator Program
(803) 935-5530

c James Bogle, Assistant Attorney General
David Stumbo, Solicitor, Eighth Judicial Circuit
Tommy Thomas, Attorney at Law
Jackie S. Bowers, Clerk of Court, Newberry County
Jeffrey E. Musick, Ph.D., Multidisciplinary Team
Ronald Owen, Resident, SVPP

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
SEXUALLY VIOLENT PREDATOR PROGRAM

ANNUAL EXAMINATION AND REVIEW HEARING NOTICE

TO: Ronald Owen
Name of Resident

FROM: Sarah Kelley, Case Manager

DATE: December 4, 2012

I. ANNUAL EXAMINATION AND REVIEW HEARING

Pursuant to Section 44-48-110, South Carolina Code of Laws,

A. You are entitled to an annual re-examination of your condition. A report of such examination is attached and will be furnished to the Court which committed you, the Attorney General, the Solicitor in the Circuit you were convicted of the qualifying offense(s), your attorney (unless you do not have one), and the multi-disciplinary team.

B. The Court conducts an annual hearing to review your status.

Please initial and check one (1) box below:

I am aware that I have the right to an annual hearing to review the status of my case.

I choose to waive my right to an annual hearing. Do NOT complete I. C. or D.

R I do not waive my right to an annual hearing.

C. You have the right to have an attorney represent you at the hearing, but you are not entitled to be present at the hearing. If you do not have an attorney and are indigent, you may request the Court to appoint an attorney to represent you at the review hearing.

Please initial and check one (1) box below:

I am aware that I have the right to be represented by an attorney at the annual hearing to review the status of my case.

I choose to waive my right to representation by an attorney.

I will exercise my right to counsel by hiring an attorney to represent me.

I want to exercise that right, do not have an attorney, I am indigent, and request the Court to appoint an attorney for me.

R Tommy Thomas is my Court appointed attorney.

D. You may retain or, if you are indigent and so request, the Court may appoint a qualified expert to examine you, and the expert shall have access to all your medical, psychological, criminal offense and disciplinary records and reports.

Please initial and check one (1) box below:

I am aware that I have the right to have a qualified expert examine me and that I may present the results of that examination to the Court at the annual review hearing.

I choose not to exercise that right at this time.

I choose to exercise that right and will hire a qualified expert to examine me.

I am indigent and I wish to have the Court appoint a qualified expert to examine me. I understand that the appointment of an expert is discretionary with the Court.

III. ACKNOWLEDGMENT

I have received and reviewed the foregoing ANNUAL EXAMINATION AND REVIEW HEARING form.

Ronald M Owen
Resident: PRINT Name

Ronald M Owen 12-4-12
Resident: SIGN Name Date

Jardh 12/4/12
Witness Date

Or, resident refused to sign.

Witness Date

ANNUAL NOTICE OF RIGHT TO PETITION FOR RELEASE
ELECTIONS TO WAIVE OR EXERCISE RIGHTS

TO: Ronald Owen
Name of Resident

FROM: Sarah Kelley, Case Manager

DATE: December 4, 2012

II. ANNUAL NOTICE OF RIGHT TO PETITION FOR RELEASE

Pursuant to Section 44-48-110 and 130, South Carolina Code of Laws,

- A. You have the right to petition the Court for release at any time, with or without the approval of the Department of Mental Health. However, it is important that you understand that if you do petition the Court for release without the approval of the Director of the Department of Mental Health, and the Court finds that either: (1) the petition was frivolous or (2) your condition has not changed so that you (the petitioner) are now safe to be at large, then the Court may deny any subsequent petitions without a hearing unless the petition contains facts upon which a Court could find your condition has so changed as to warrant a hearing.

Please initial and check the box below:

I am aware of the fact that I have the right to petition the Court for release at any time and I am aware that this document does not constitute a "Petition for Release."

III. ACKNOWLEDGMENT

I have received and reviewed the foregoing ANNUAL NOTICE OF RIGHT TO PETITION FOR RELEASE form.

Ronald P. Owen
Resident: PRINT Name

Ronald Owen 12 4-12
Resident: SIGN Name Date

Sarah Kelley 12/4/12
Witness Date

Or, resident refused to sign.

Witness Date

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)
)
IN THE MATTER OF THE CARE)
AND TREATMENT OF)
RONALD OWEN,)
PETITIONER.)
_____)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-36-00319

MOTION TO DENY 2012 PETITION FOR
RELEASE/ANNUAL REVIEW

To: Tommy A. Thomas, Attorney for Petitioner.

PLEASE TAKE NOTICE that the Respondent State of South Carolina, by and through the South Carolina Attorney General's Office, hereby moves pursuant to South Carolina Code §44-48-130, for an Order denying the petition for release/annual review.

The basis of this motion is as follows:

1. The matter is before the court on an annual review/petition for release, under S. C. Code Ann. Section 44-48-110.
2. Petitioner was committed to the Department of Mental Health (hereafter, DMH) under the Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.* on or about February 3, 2010.
3. Petitioner petitioned for release in his 2011 Annual Review, without the approval of the Director of the Department of Mental Health, an annual review hearing was held and Dr. Marie E. Gehle of the Department testified that there was insufficient basis to conclude Petitioner's mental abnormality has so changed that he was safe to be at large and no longer likely to engage in acts of sexual violence. Petitioner's Annual Review was denied, and he was ordered to remain in the custody of the Department of Mental Health, by order filed April 17, 2012 (*see attached EXHIBIT 1*).

4. Pursuant to Petitioner's Annual Review and Notice of Right to Petition for Release, dated on or about December 4, 2012, Petitioner again seeks release without the approval of the Director of the Department of Mental Health. The accompanying Annual Review Treatment Report by psychologist Dr. Gehle concludes that there is insufficient basis to conclude Petitioner's mental abnormality has so changed that he is now safe to be at large and no longer likely to engage in acts of sexual violence (**EXHIBIT 2**).
5. S. C. Code Ann. Section 44-48-130 provides that if a person has previously filed a petition for release without the approval of the Director of the Department of Mental Health, and the Court determined following a hearing that the petitioner's condition had not changed so he was safe to be at large and, if released, was not likely to commit acts of sexual violence, then the Court must deny any subsequent petition for release as frivolous, without a hearing, unless the subsequent petition contains facts upon which a Court could find the condition had changed so that a hearing was warranted.
6. Given Petitioner's prior petition for release without the approval of the Director of the Department of Mental Health, the denial of that petition, and the lack of evidence of sufficient progress in treatment to show that his mental abnormality has so changed that he is safe to be at large, Petitioner's pending petition for release is frivolous, and the State submits S. C. Code Ann. Section 44-48-130 mandates denial of the petition for release without a hearing on the matter.


WHEREFORE based on the foregoing, the State submits that the petition for release/annual review should be summarily denied in its entirety.

Respectfully Submitted,

ALAN WILSON
Attorney General

JAMES G. BOGLE, JR.

Senior Assistant Attorney General
S. C. Bar No. 755
Post Office Box 11549
Columbia, South Carolina 29211
V: (803) 734-1173
F: (803) 734-6679

BY: 
JAMES G. BOGLE, JR.
ATTORNEY FOR
RESPONDENT STATE OF
SOUTH CAROLINA

December 13, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-36-00319

IN THE MATTER OF THE CARE)
AND TREATMENT OF)
RONALD OWEN,)
)
PETITIONER.)
_____)

REPLY TO MOTION TO DENY 2012 PETITION
FOR RELEASE/ANNUAL REVIEW

FILED
NEWBERRY COUNTY
2013 JAN 10 P 1:17
JACKIE S. BOWEN
CLERK OF COURT

TO: James G. Bogle, Attorney for the State of South Carolina

PLEASE TAKE NOTICE that the Petitioner, by and through his attorney, Tommy A.

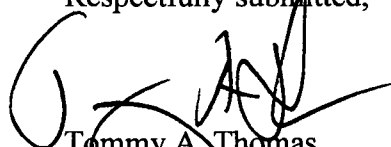
Thomas, hereby moves pursuant to South Carolina Code §44-48-110, for an Order granting the petition for release/annual review. The basis of this motion is as follows:

1. This matter is before the Court on an annual review/petition for release, under S.C. Code Ann. Section 44-48-110. The State has filed a Motion to summarily deny Petitioner's 2012 Petition for Release/Annual Review.
2. Petitioner was committed to the Department of Mental health (hereafter, DMH) under the Sexually Violent Predator Act, S.C. Code Ann. Sections 44-48-110 *et seq.* on or about February 3, 2010.
3. Petitioner petitioned for release in his 2011 Annual Review, without the approval of the Director of the Department of Mental Health, an annual review hearing was held and Dr. Marie E. Gehle of the Department testified that there was insufficient basis to conclude Petitioner's mental abnormality has so changed that he was safe to be at large and no longer likely to engage in acts of sexual violence. Petitioner's Annual Review was denied, and he was ordered to remain in the custody of the Department of Mental health, by order filed April 17, 2012. This matter is currently under appeal in the Court of Appeals.

4. That pursuant to Sections 44-48-110 a committed person may retain a qualified expert to examine the person and the expert may have access to all medical, psychological, criminal offense and disciplinary records and reports concerning the person. The Court must conduct an annual hearing to review the status of the committed person.
5. The State, in their Motion, relies on Section 44-48-130 for denial of the Applicant's Petition for Release. It is the State's contention, that since the Department of Mental Health is recommending that he remain committed in the Program, that his petition for release is frivolous. That Dr. William Burke testified on the Petitioner's behalf at his last review hearing. The Petitioner at trial on the original Petition for Commitment agreed to volunteer for the program. This is his second review hearing since the initial commitment. The Petitioner is in the process of obtaining his own expert, pursuant to section 44-48-110.
6. The Petitioner is informed and believes that his Motion for release is not frivolous. That he is entitled to an individual and independent evaluation by a qualified expert of his own choosing and that he is entitled to present this evidence to the Court prior to its decision to either grant or deny the Petition.
7. That the Petitioner is informed and believes that even a minimal amount of due process would require that he be able to avail himself of those provisions under Section 44-48-130. That a strict reading of the State's Motion would imply that no one should ever be given a review hearing, should the South Carolina Department of Mental Health decide that there had been no change in their condition. That under these conditions, the Petitioner would be without recourse to the Court. This denial based on a decision by the agency who has him securely confined.

WHEREFORE, based upon the foregoing, the Petitioner submits that he is entitled to an independent evaluation, pursuant to Section 44-48-130. That he is entitled to present this evidence to the Court in support of his Petition for release and annual review.

Respectfully submitted,



Tommy A. Thomas
Attorney for Petitioner
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, SC
January 8, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

JACKSON POWERS
CLERK OF COURT

2013 JAN 16 A 11:29

FILED
NEWBERRY COUNTY

DOCKET NO. 2009-CP-36-00319

IN THE MATTER OF THE CARE)
AND TREATMENT OF)
Ronald Owen,)
Respondent,)

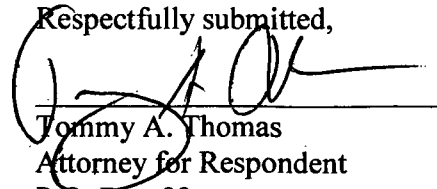
MOTION FOR RECONSIDERATION

MOTION IS MADE by Tommy A. Thomas, Attorney for the Respondent, for reconsideration of the Courts Order Denying 2012 Petition for Release/Annual Review dated December 21, 2012.

1. Counsel for the Respondent received the State's Motion to Deny Respondent's 2012 Petition for Release/Annual Review on December 18, 2012.
2. On January 9 2013, counsel filed a Reply to the State's motion, a copy is attached hereto.
3. The Respondent is informed and believes that he is entitled to a hearing to present evidence in support of his Petition for Release/Annual review.

WHEREFORE, the Respondent respectfully requests that the Court reconsider its Order of Dismissal and deny the State's Motion for Summary Dismissal.

Respectfully submitted,



Tommy A. Thomas
Attorney for Respondent
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

January 15, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)
)
IN THE MATTER OF THE CARE)
AND TREATMENT OF)
RONALD OWEN,)
PETITIONER.)
_____)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-36-00319

RETURN TO MOTION FOR
RECONSIDERATION

FILED
NEWBERRY COUNTY
2013 JAN 17 A 9:34
JACKIE S. BOWEN
CLERK OF COURT

To: Tommy A. Thomas, Attorney for Petitioner

The Respondent State of South Carolina, by and through the South Carolina
Attorney General's Office, would make the following Return to the Motion for
Reconsideration:

1. The matter is before the court on an annual review/petition for release, under S. C. Code Ann. Section 44-48-110.
2. Petitioner was committed to the Department of Mental Health under the Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.* on or about February 3, 2010.
3. Petitioner petitioned for release in his 2011 Annual Review and a contested annual review hearing was held. Petitioner's Annual Review was denied, and he was ordered to remain in the custody of the Department of Mental Health, by order filed April 17, 2012.
4. In 2012 Petitioner again sought release without the approval of the Director of the Department of Mental Health. Upon Motion by the State pursuant to S. C. Code Ann. Section 44-48-130 that petition was denied.
5. The following timeline describes the above: (a) The packet from the Department containing Petitioner's Request to be release was dated December

4, 2012, and addressed to the Chief Administrative Judge with copies to the Attorney General's Office and Respondent's attorney; (b) the State's Motion to Deny the 2012 Petition was mailed to the Clerk of Court on December 13, 2012, with a copy to Respondent's attorney, and was filed December 14, 2012; (c) a proposed Order was sent to Chief Administrative Judge Addy on or about December 17, 2012, with a copy to Respondent's attorney; (d) Judge Addy signed the Order on December 21, 2012; (e) the Order was sent to the Clerk of Court for filing by letter dated January 7, 2013; (f) Respondent's Reply to the Motion dated January 8, 2012 (sic) was received by the Attorney General's Office on January 10, 2013 with an accompanying letter dated January 9, 2013; (g) the Order denying the 2012 Petition was filed January 9, 2013 and mailed to counsel by the Clerk of Court that same day; and (h) on January 16, 2013 the Attorney General's Office received Petitioner's Motion for Reconsideration dated the previous day.

6. Petitioner's 2011 Annual Review was his first since being committed. The hearing, held on March 13, 2012 was contested in that Petitioner had secured an independent evaluation from Dr. William Burke of Summerville, and presented Dr. Burke as a witness.
7. The Motion to Dismiss the 2012 Petition was filed and acted upon in a timely fashion. The Order denying the 2012 Petition had a sound factual basis, and was appropriate under the Sexually Violent Predator Act, specifically the provisions of S.C. Code Ann. Section 44-48-130, which was written to address situations such as this. Petitioner should remain in the Sexually

Violent Treatment Program, and an Annual Review Hearing held on a Petition for Release at such time as Petitioner has made sufficient progress in treatment that there would exist probable cause that his mental abnormality or personality disorder has so changed that he would be safe to be at large, as required by the Annual Review statute, S.C. Code Ann. Section 44-48-110.

WHEREFORE, it is respectfully requested that the Motion for Reconsideration be denied.

Respectfully Submitted,

ALAN WILSON
Attorney General

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Senior Assistant Attorney General
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BY: 

JAMES G. BOGLE, JR.
ATTORNEY FOR
RESPONDENT STATE OF
SOUTH CAROLINA

January 16, 2013
Columbia, South Carolina

**SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE**

SEXUALLY VIOLENT PREDATOR

ANNUAL REVIEW

Pursuant to §44-48-110

Name: RONALD OWEN
SCDMH #: 10189145
SCDC #: 310404
Date of Birth: December 10, 1960
Date of Commitment: February 3, 2010
Date of Admission: February 17, 2010
County: Newberry
Review Period: March 31, 2011 to November 26, 2012
Date of Report: November 26, 2012
Evaluator: Marie E. Gehle, Psy.D.

DIAGNOSES Pedophilia, Sexually Attracted to Both, Limited to Incest, Nonexclusive Type
Personality Disorder, Not Otherwise Specified

REFERRAL INFORMATION

Ronald Owen is a 51-year-old male who was committed to the Sexually Violent Predator Program (SVPP) of the South Carolina Department of Mental Health (SCDMH) after adjudication as a Sexually Violent Predator (SVP), pursuant to statute.

Pursuant to §44-48-110, the purpose of the current annual review is to assess whether Mr. Owen's "mental abnormality or personality disorder has so changed that the person is safe to be at large and, if released, is not likely to commit acts of sexual violence."

NOTIFICATION

The nature and purpose of this evaluation were explained to Mr. Owen at the beginning of the interview. He was notified that the information obtained during this evaluation would not remain confidential, and that anything he disclosed could be included in a report to the Court, the Attorney General's office, his attorney, and the SVPP treatment team. Mr. Owen demonstrated an adequate understanding of the purpose of the evaluation and the limits of confidentiality and agreed to proceed with the evaluation.

SOURCES OF INFORMATION

1. Legal records, including police reports, statements of victims and witnesses, arrest warrants, and indictments;
2. Sexual Predator Synopsis Form, dated June 18, 2009;
3. Sexual Predator Referral Form, dated June 18, 2009;
4. Petition Pursuant to the Sexually Violent Predator Act, dated July 28, 2009;
5. Supplement to Petition to the Sexually Violent Predator Act, dated August 13, 2009;
6. Records from South Carolina Department of Corrections (SCDC);
7. Precommitment Evaluation by Peggy Wadman, M.D., dated October 14, 2009;

EXHIBIT 2

8. Penile Plethysmograph Report by Michael Gassen, Psy.D., dated October 15, 2009;
9. National Crime Information Center (NCIC) criminal history report;
10. Records from the Sexually Violent Predator Program;
11. Consultation with the SVPP treatment team;
12. Interview of Mr. Owen on March 4, 2011, for approximately 2 hours and 15 minutes for the purpose of the 2011 annual review evaluation;
13. Interview of Mr. Owen on October 24, 2012 for one hour.

LEGAL HISTORY

Mr. Owen's criminal history includes seven charges with three convictions for sexual offenses. In addition, he was convicted of Failure to Register and arrested for violating his probation and being a fugitive of justice. He has two known victims, his son and daughter. At the time of the sexual abuse, the victims were between 3 and 11 years of age. Mr. Owen has a criminal history in Delaware, Florida, and South Carolina.

Mr. Owen was indicted on three counts of Unlawful Sexual Intercourse in the First Degree by the Kent County Superior Court, Delaware. The charges stem from allegations that Mr. Owen engaged in sexual intercourse with his daughter between August 2, 1989 and September 30, 1990. The victim alleged the sexual acts began when she was between 3 and 5 years of age and continued for several years (she was 10 years old when she disclosed the abuse) in took place in several different places in Delaware and South Carolina. The sexual acts included fondling, oral sex (giving and receiving), simulated sex, digital-vaginal penetration, and attempted penile-vaginal penetration. Through a plea agreement dated November 29, 1994, he pleaded guilty to one count of Unlawful Sexual Intercourse in the Third Degree. He was sentenced to three years' incarceration suspended to two years at Level III, two years at Level II, and one year at Level I (Level I, II, III are probationary status sentences). The probation was transferred to South Carolina, where he was residing. He was ordered to have no "direct" contact with the victim, undergo a psychological evaluation, and complete all treatment recommendations. Because it was alleged that Mr. Owen also engaged in sexual intercourse with his daughter while in the state of South Carolina, it was noted on the plea agreement,

that the State [Delaware] shall not refer this case to South Carolina authorities for further prosecution and that the Defendant's guilty plea to this charge shall not be treated or is not an admission to alleged sexual intercourse charges to the victim in South Carolina.

In December 1999, Mr. Owen was arrested in Florida on an out-of-state fugitive warrant in for failing to meet his probationary requirements for the above sentence.

In 2003, Mr. Owen was investigated by several counties in South Carolina and by the Federal Bureau of Investigation (FBI) for sexual offenses against his minor son. The victim alleged that Mr. Owen engaged in sexual intercourse with him on numerous occasions in several counties and states. In Berkeley County, Mr. Owen was charged with two counts of Criminal Sexual Conduct upon a Minor in the First Degree. He entered an Alford Plea to one count of Lewd Act upon a Minor. He was sentenced to 12 years' incarceration. In Charleston County, Mr. Owen was charged with Failure to Register. The charge stemmed from the earlier offense against his daughter in which he failed to register as a sex offender

in South Carolina. He was sentenced to 90 days incarceration, concurrent to his other sentences. In the current interview, Mr. Owen explained that he was registered as a sex offender in Berkley County and that the failure to register charge was incorrect. In Newberry County, Mr. Owen pleaded no contest to one count of Committing a Lewd Act on a Minor. He was sentenced to 12 years' incarceration, concurrent to his other sentences. In Spartanburg County, Mr. Owen was charged with Criminal Sexual Conduct in the Second Degree. After an investigation, the charges were withdrawn as the victim could not identify the specific place the sexual assault occurred. Mr. Owen was sentenced in 2005. On July 21, 2005, Mr. Owen was arrested in Florida on two outstanding Delaware warrants – Fugitive from Justice and Violation of Probation. He was returned to Delaware. The disposition of this matter is unclear from available records.

PREVIOUS SEX OFFENDER TREATMENT

According to SCDC records, Mr. Owen did not complete any prison or outpatient sex offender treatment programs. There are no records to indicate that he participated in sex offender treatment in the community.

PREVIOUS EVALUATIONS AND DIAGNOSES

Mr. Owen underwent an independent evaluation to determine whether he met criteria for commitment under the Sexually Violent Predator Act in September 2009. In that evaluation he was diagnosed with Pedophilia, Sexually Attracted to Both, Limited to Incest, Nonexclusive Type and Personality Disorder, Not Otherwise Specified. The following relevant passages are quoted from the report:

In 2003, Mr. Owen was arrest for Lewd Act upon a Minor in Newberry County and two counts of Criminal Sexual Conduct with a Minor, First Degree in Berkeley County. In a plea agreement, the two counts in Berkeley County were reduced to one count of lewd Act on a Child under 16, and Mr. Owen entered an Alford Plea. He was sentenced on July 21, 2005 to 15 years incarceration, suspended to 12 years. He pleaded *nolo contendere* to the offense in Newberry County and was sentenced on January 13, 2006 to 12 years incarceration to run concurrent with the sentence issued by the Berkeley County court. The convictions stemmed from earlier allegations by his then 11-year-old son that Mr. Owen had anally raped him numerous times beginning when he was six years old. The abuse stopped in September 2003 when the boy told his mother and police. Mr. Owen was also investigated by the Spartanburg County Sheriff's Office for additional offenses against his son that he allegedly committed in that county, but the victim was unable to positively identify the location of the alleged incidents and therefore additional charges were not pursued.

Mr. Owen's son told police that the sexual assaults took place in various locations while he was traveling with his father in RVs and semi-trucks owned and operated by Mr. Owen. In a voluntary statement dated October 11, 2003, the boy told police that Mr. Owen "put his penis inside my rectum. I remember telling my father that it hurt when he did that to me. He told me not to tell anyone especially my Mom." The victim told police this happened "many times." He said when he was 8 or 9 years old his father anally raped him at least 10 different times at his paternal grandparents home (the Rosarios, mother and stepfather of Mr. Owen). He said his father would

"tell me not to scream...he would just keep putting his (penis) inside of me until he was finished...it was painful. It is difficult to describe the pain." In his statement, the victim described other time periods and locations when the abuse occurred. A medical exam of the boy revealed rectal scarring consistent with sexual abuse. He and his mother also accused Mr. Owen of physically abusing both of them on numerous occasions.

During the time Mr. Owen was awaiting trial, his cellmate (Joseph Turner) made allegations that Mr. Owen had tried to hire him to kill April Foster and Jesse Owen so they would be unable to testify against him. The cellmate gave police a detailed description of Ms. Foster's car and directions to her house. Investigators found the story to be credible, believing that the cellmate would have no way of knowing this information had Mr. Owen not told him. Police took the threats seriously enough to warn Mr. Foster that her life and the life of her son might be in danger. Records indicate that the Laurens County Sheriff's Office assigned an extra patrol to Ms. Foster's neighborhood in response to the threat. However, there is no indication from available records that charges were filed against Mr. Owen for any offense related to such a threat.

Initially, Mr. Owen denied several times to this examiner that he sexually abused his son. Toward the end of the interview, he said there was an incident in which he awakened to find someone "going down on me" (performing oral sex on him). He said he thought it was the woman next door, who was his sexual partner at the time, but he discovered that it was his son, Jesse, instead. Mr. Owen said he stopped the boy from performing oral sex on him and called Ms. Foster, telling her that "she needed to talk to him." He said another time he woke up and his son was "actually with his hand there (on Mr. Owen's penis) fondling me and I didn't stop him...I was just an idiot, but no, there was no anal sex." He said "there's no doubt in my mind" that Ms. Foster and his son made up the story about sexual abuse "for the lawsuit," which he said Ms. Foster filed against his parents. He said Ms. Foster sued his parents because she alleged that they should have told her that Mr. Owen was a registered sex offender. Mr. Owen said he "took a plea bargain because they threatened me with 30 years." He said the "failed a lie detector test and my attorney advised me to take a plea."

On or about June 24, 1994, Mr. Owen was arrested for three counts of Unlawful Sexual Intercourse, First Degree (Victim <16 and Not Social Companion) in the state of Delaware. The victim was his then 7-year-old daughter. The sexual offenses allegedly occurred between September 15, 1990 and October 31, 1990. Records document that a school counselor telephoned Corrine Owen (Mr. Owen's ex-wife and mother of the victim) to inform her that her daughter Stephanie had reported several incidents of sexual abuse by her father. Stephanie told her counselor and later the police that Mr. Owen had taken her into his bedroom on several occasions in 1990 and made her "suck his penis." In her statement to police, Stephanie said she knows the sexual abuse started when she was three years old because it coincided with her illness with chicken pox which she had when she was age three. She said over a several year period, Mr. Owen made her perform oral sex on him, digitally penetrated her vagina with his fingers, performed oral sex on her and

attempted to have penile-vaginal intercourse with her. In exchange for a plea of guilty to one count of Unlawful Sexual Intercourse, Third Degree, the state of Delaware nolle-prossed the two remaining charges. Mr. Owen was sentenced to three years incarceration, suspended to five years probation with the probation being transferred to the State of South Carolina where Mr. Owen was residing at the time of his arrest. Terms of the probation included submitting to a psychological evaluation and successfully completing all treatment recommendations. The plea agreement stated, "The Defendant's guilty plea to this charge shall not be treated or is not an admission to alleged sexual intercourse charges to the victim in South Carolina." Mr. Owen was arrested in St. John's County, Florida on an out-of-state fugitive warrant in December 1999 for failing to meet his probationary requirements.

Mr. Owen denied to this examiner that he sexually molested his daughter. He said his daughter was angry with him for leaving her mother (Corinne Owen) for another woman (April Foster). He said, "What happened was my daughter's friend down the street had accused her father of abusing her - I don't know if she just transferred her anger over to me or what...I had run off with another woman."

On July 21, 2005, Mr. Owen was arrested in Florida on two outstanding Delaware warrants - Fugitive From Justice and Violation of Probation. He was returned to Delaware. This disposition of this matter is unclear from available records. In 2005, he pleaded guilty to Failure to Register as a Sex Offender in South Carolina. He was sentenced to 90 days to be served concurrently with his sentence from Berkeley County for Lewd Act on a Minor (See Index Offense). The charge stemmed from the earlier offense against his daughter in which he failed to register as a sex offender in South Carolina.

Mr. Owen meets the criteria for a diagnosis of Pedophilia, Sexually Attracted to Both, Limited to Incest, Nonexclusive Type. He has a suggested history of experiencing recurrent, intense sexually arousing fantasies, sexual urges or behaviors involving sexual activity with his prepubescent children, both male and female.

Regarding a diagnosis of Sexual Sadism, the paraphilic focus of this disorder involved acts in which the individual derives sexual excitement from the psychological or physical suffering of the victim; it is the suffering of the victim that is sexually arousing. Both Ms. Foster and Mr. Owen's son described instances (alleged, in Ms. Foster's case) in which Mr. Owen anally raped them while they either cried or resisted. From their descriptions, it appears that Mr. Owen knew or should have known that what he was doing was painful to them. However, it is unclear at this time whether he derived sexual gratification from the infliction of pain or gratification from the sex act itself and, therefore, the diagnosis of Sexual Sadism will not be given. This should be explored in therapy if he is committed to the SVPTP.

Regarding the diagnosis of Personality Disorder Not Otherwise Specified, Mr. Owen has many personality features that together cause significant distress or

impairment in important areas of social functioning. He has shown a sense of entitlement and interpersonal exploitation in his relationships with others and appears to lack empathy in his relationships. He was physically abusive toward his son and allegedly toward at least one of his ex-partners. During this evaluation with this examiner, he showed a significant lack of remorse for the harm caused to his victims.

PREVIOUS PHYSIOLOGICAL ASSESSMENT

As part of the precommitment evaluation, Mr. Owen underwent a penile plethysmograph (PPG) in October 2009. The following results were offered:

No circumferential changes were measured during the first seven trials, and Mr. Owens removed and then repositioned the transducer during the seventh trial. Subsequently, circumferential changes were measured, but the changes were very small and resulted in a notably flat profile. There were no significant differences between his largest mean score on a non-deviant category and his largest mean score on a deviant category.

RESIDENTIAL FUNCTIONING AND BEHAVIOR

Mr. Owen was admitted to the SVPP on February 17, 2010. He has resided at the SVPP's Edisto unit at Broad River Correction Institution since that time. In regard to medical issues, Mr. Owen is treated for hypertension, constipation, muscle spasms, seasonal allergies, and insomnia. He is not considered to be a behavioral problem in the milieu. In November 2011, he was said to have wrote two love letters to another resident in the program. Mr. Owen admitted to writing the letters, but claimed that they were not genuine. He told staff members that he the other resident manipulated him into copying the letters in his hand writing in order to make a prison inmate jealous.

SVPP TREATMENT SUMMARY

Mr. Owen has been active in sex offender treatment groups and unit activities during his commitment to the SVPP. He attends groups at the Crafts-Farrow campus. As such, he was prohibited from attending process group for approximately 3 months subsequent to a behavioral infraction that resulted in a level reduction. He was given assignments to work on individually during the suspension from group. His current primary goals are to identify and understand his offense cycle and his risk factors related to sexual offending. His current therapist described him as "active, talkative, and very willing to relate the conversation topics to his own treatment." Other therapists describe him as "cocky" on the unit and "quiet" in group. It was noted that he was not taking advantage of the treatment offered in the program. In early 2012, prior to an annual review hearing, he chose not to present an assignment in group "due to his recent independent evaluation and the court date. The following was noted in the 2011 annual review evaluation,

According to his group therapists, he is "eager" to work and has completed several assignments. In group, he made comments about his historically negative view of "child molesters" and does not see himself in this negative light. It was noted that "his behavior does not agree with his view of himself." He has a rather naïve view of his sexual offending and the motivation involved. It appears he truly believes that he offended against his children for mere sexual gratification. As such, his therapist

stated that he is in the early stages of treatment.

MENTAL STATUS EXAMINATION

Mr. Owen is a 51-year-old Caucasian male whose hygiene and grooming were adequate. He was alert, oriented, and demonstrated appropriate eye contact during the interview. His speech was normal in rate, volume, and tone. His thought processes were logical, linear, and goal-directed. His affect was euthymic, and he was cooperative with the evaluation. He denied symptoms of mental illness, and no overt symptoms were observed. He denied recent or current suicidal or homicidal ideation. In sum, his mental status was unremarkable and consistent with that noted in previous evaluations.

INTERVIEW

Mr. Owen said he has been doing well. He said he was out of his process group for "awhile" several months prior to the interview. He said he received a behavioral infraction for trading watches with his father during a visit, against program rules. He said visits were stopped for 30 days and he was put on red level for 30 days. He said he was given assignments and just returned to group a couple of weeks ago. He recently enrolled in an anger management group. Mr. Owen said he has completed assignments focused on disclosing his sexual offenses, building positive self-esteem, recounting his sexual history, and developing empathy for his victims. He said he is currently working on his risk factors related to sexual offending.

When asked about his sexual offenses, Mr. Owen said he sexually offending his daughter in Delaware in 1994. He said he fondled her, had her perform oral sex on him, and "slick leg[ged]" her (simulated sexual intercourse). He said he was not sexually attracted to his daughter. He said he engaged her in sexual acts because he was "curious" and it was "easy sex." When asked how it was "easy," he indicated she was present at the time. He said the first time he offended her, his wife was a few feet away in the bathroom. He recalled, "The very first time. Me and her mother were in the middle of intercourse and she had her doubts that I had been messing around anyway, we had did something and we stopped. She went and got into the shower." He said, "It really wasn't a desire to have a little girl in my bed. I think it was really a means of sexual gratification. I don't know why, at the time, I didn't think about how much it was going to hurt her in the long run. Even then, the guilt I had." Of the length of time he sexually offended her, he said, it "wasn't quite a year, but pretty close." He said it happened "probably 6 or 7 or 8 times." He also said he had a girlfriend at the time.

Mr. Owen said he sexually offended his son for "about a year" between 2002 and 2003. When asked why he offended his son, he said,

I don't know if it was just the fact that I had never considered a gay relationship or a male on male relationship and he was with me nonstop, we were in the truck together. I never even considered the consequences. I mean, I knew there would be consequences because I had gotten in trouble with my daughter. I was given probation and I never even had to really serve the probation.

When asked if he was sexually attracted to his son, Mr. Owen said, "No, not sexually attracted." He denied penetrating the victim. He denied performing penile-anal intercourse on the victim.

Mr. Owen denies having any sexual attraction towards children. He denied becoming erect until the physical touching occurred with the children. He said he was more attracted to his wife than to the kids. He said his sexual arousal is exclusive to adult woman "usually in their 20's or 30's." Because Mr. Owen claims that he sexually offended his children solely to meet his sexual desires for adult women, he was asked why he did not simply masturbate. He said, "I normally never had to." He said, "I know I messed up."

ACTUARIAL RISK ASSESSMENT

The Static-99R is an instrument designed to assist in the prediction of sexual and violent recidivism for sexual offenders. The recidivism estimates were derived from new charges and reconvictions of groups of individuals; as such, these estimates do not directly correspond to the recidivism risk of an individual offender. Mr. Owen's score on the Static-99R (3) places him in the Low-Moderate risk category relative to other adult male sex offenders. Mr. Owen's status as an adjudicated SVP indicates that he has been deemed sufficiently high risk to warrant indefinite detention. Therefore, his score on the Static-99R was compared to a reference group identified as "high risk/need." On average, 15.8% (range = 13.5-18.3) of high-risk sex offenders with this score sexually recidivated within five years; and 24.3% (range = 21.2-27.7) of high-risk sex offenders with this score sexually recidivated within ten years.

DIAGNOSTIC FORMULATION

Mr. Owen sexually offended his biological male and female children between 1989 and 2003. While he denies ever being sexually attracted to these children (nor any children), he engaged in sexual behaviors with these children when they were prepubescent, when he had the high likelihood of being detected, and following being caught and prosecuted. At the time he was committing the offenses, he had abundant access to adult partners. Each of these factors indicates preference for sexual acts with prepubescent children. He has no known victims apart from his biological children. As such, he meets diagnostic criteria for Pedophilia, Sexually Attracted to Both, Limited to Incest, Nonexclusive Type.

Mr. Owen presents with antisocial and narcissistic personality traits. The following was noted in the precommitment evaluation and is consistent with his current presentation,

He has shown a sense of entitlement and interpersonal exploitation in his relationships with others and appears to lack empathy in his relationships. He was physically abusive toward his son and allegedly toward at least one of his ex-partners. During this evaluation with this examiner, he showed a significant lack of remorse for the harm caused to his victims.

Because these personality traits are maladaptive and cause impairment in his interpersonal and social functioning, Mr. Owen meets criteria for Personality Disorder, Not Otherwise Specified.

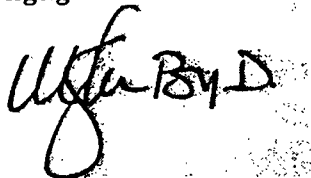
OPINION

Based on evidence that Mr. Owen has a mental abnormality or personality disorder and is likely to sexually reoffend, the Court previously determined that he met the criteria as an SVP. He was committed to the SVPP for control, care, and treatment to attempt to help him

change such that he would be safe to be at large. His diagnoses of Pedophilia, Sexually Attracted to Both, Limited to Incest, Nonexclusive Type and Personality Disorder, Not Otherwise Specified are considered chronic disorders; he has unchangeable risk factors that continue to put him at risk for reoffending; he has not completed treatment and there is no guarantee that such treatment would make him safe to be at large.

Consistent with the prior annual review evaluation, Mr. Owen has slowly begun disclosing his problematic sexual behaviors involving his children. While he admits sexually offending them, he denies the extent of the abuse reported by the victims. For example, he explicitly denies penetrating his son. He says his offenses against his children were for purely sexual reasons. He is making progress in treatment and is pleasant and active in the program. However, his lack of insight into his sexual offenses suggests he is in the early stages of treatment.

In consideration of all the available information, it is this examiner's opinion that Mr. Owen continues to meet the definition of a Sexually Violent Predator. Mr. Owen's present mental condition seriously impairs his ability to control his sexually violent behavior. As such, at this time, there is insufficient basis to opine that his mental abnormality or personality disorder has so changed that he is now safe to be at large and no longer likely to engage in acts of sexual violence.



Marie E. Gehle, Psy.D.
Chief Psychologist

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)
)
IN THE MATTER OF THE CARE)
AND TREATMENT OF)
RONALD OWEN,)
RESPONDENT.)
_____)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

CASE NUMBER: 09-CP-36-319

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing:

1. Motion to Deny 2012 Petition for Release/Annual Review

was this 13th day of December, 2012, mailed, postage prepaid to:

Tommy A. Thomas, Esquire
Post Office Box 88
Irmo, South Carolina 29063

By: Gabriel R. Martin
Gabriel R. Martin
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-3243

State of South Carolina)	
)	Court of Common Pleas
County of Newberry)	2009-CP-36-319

State of South Carolina)	
vs.)	Transcript of Record
)	
Ronald Owen)	
DEFENDANT)	

March 13, 2012
Newberry, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Jr., Judge.

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

Jim Bogle, Assistant Attorney General
Attorney for the State

Tommy A. Thomas, Esq.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

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I N D E X O F W I T N E S S E S

(IC) - Denotes In Camera
(DW) - Denotes Defense Witness
(SW) - Denotes State's Witness

(DW) William Burke

Direct examination by Mr. Thomas: 6
Cross-examination by Mr. Bogle: 20
Redirect examination by Mr. Thomas: 28
Recross-examination by Mr. Bogle: 33

(SW) Marie Gehle

Direct examination by Mr. Bogle: 34
Cross-examination by Mr. Thomas: 44

Certificate of Reporter 64

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EXHIBITS

State's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE</u>
1	Letter		X	5
2	Right to Petition Form		X	5
3	Dr. Marie Gehle's report		X	5

1 MR. BOGLE: Judge, may it please the Court.

2 THE COURT: Yes, sir.

3 MR. BOGLE: Just to set the record what we are here
4 on. This is an annual review hearing of the sexually
5 violent predator act, section 44-48-110. For the record,
6 my name is Jim Bogle, I represent the State in this case.
7 The respondent, Ronald Owen, docket number 2009-CP-36-319
8 went to trial back in 2010. In the middle of the trial he
9 agreed to voluntarily commit himself to the sexually
10 violent predator unit. And the order to that effect was
11 filed on February 3, 2010. I believe you were the trial
12 Judge in that case. So that is where we are. I would
13 also like to note that by agreement there are three
14 exhibits in the record right now. The first one, exhibit
15 1 is the letter to the Chief Administrative Judge of this
16 circuit with a copy to me and Mr. Thomas advising us that
17 Mr. Owen wants to exercise his right to petition for
18 release. Exhibit number 2 is the form put out by the
19 Department of Mental Health, it is called annual notice of
20 right to petition for release, election to waive or
21 exercise rights. The third document is the report
22 prepared in conjunction with the other two, it is a report
23 by Dr. Marie Gehle, G-E-H-L-E. She is a chief
24 psychologist at the Department of Mental Health and it
25 came with these other two documents. I would like to

1 recognize for the record that [REDACTED] and [REDACTED]
2 are present in the courtroom. April Foster is the mother
3 of the victim, Jessie Owen, in this case. That is one of
4 the two victims in the case is Jessie Owen. They are here
5 as well to watch this hearing. So basically this is an
6 annual review hearing under the case of The Matter in the
7 Care and Treatment of Billy Ray Tucker. And I have a copy
8 here if Your Honor needs one. It is an opinion filed with
9 the Supreme Court on March 24th of 2003. This is the
10 standard annual review case. Under the section of the
11 code which I cited earlier the burden is upon the
12 committed person to show a probable cause that his mental
13 condition is so changed that he is safe to be released.
14 So that is where we are today, Your Honor.

15 (Whereupon, State's Exhibit 1, 2 and 3 were admitted
16 into evidence.)

17 THE COURT: All right. Mr. Thomas, do you agree with
18 that summary of the posture of the case as it now stands?

19 MR. THOMAS: I do, Your Honor.

20 THE COURT: You carry the burden, I will let you
21 proceed.

22 MR. THOMAS: Thank you, Your Honor. Your Honor, if
23 it please the Court. We would call Dr. William Burke to
24 the stand.

25 THE COURT: Mr. Burke.

1 WILLIAM BURKE, being
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 By Mr. Thomas:

5 Q Dr. Burke, will you please give us a little bit of
6 information about your background and what degrees you may
7 hold.

8 A I have a Bachelors Degree in Psychology from the
9 Citadel. A Masters Degree in Clinical Counseling from the
10 Citadel. PHD from the University of South Carolina in
11 Counseling. I have had extensive training regarding the
12 evaluations and treatment of sexual offenders and I am
13 involved with multiple research projects that the Medical
14 University of South Carolina, Department of Forensic
15 Psychiatry.

16 Q And do you currently have certain positions with the
17 Medical University of South Carolina?

18 A I am a Clinical Research Professor as well as an
19 Academic Professor for the Department of Forensic
20 Psychiatry.

21 Q And you are currently have a or operate a treatment
22 program for sexual offenders?

23 A I have a treatment program that currently, I can give
24 you rough numbers, anywhere from 250 to 280 sex offenders
25 in 14 counties we provide services and oversight out of

1 four different offices in South Carolina.

2 Q And approximately how long have you been involved in
3 the field of treatment of sexual offenders?

4 A Well initially 1982 but full-time working with this
5 population began in 1989.

6 Q And you are familiar with the sexually violent
7 predator program?

8 A Yes, sir.

9 Q And have you testified in courts in our State of
10 South Carolina regarding sexual violent predators?

11 A Multiple times, yes.

12 Q And how many times roughly do you know?

13 A Anywhere between 40 and 50 times since I believe 1999
14 up to 2000.

15 Q And are you familiar with the evaluation process for
16 sexually violent predator?

17 A I am.

18 Q And have you been involved in that process in
19 evaluating individuals for the sexually violent predator
20 program?

21 A Not necessarily for the program. I am often hired to
22 provide evaluations of people who are going through the
23 process and have provided laboratory data for the
24 Department of Mental Health for the sexual violent
25 predator program.

1 Q And have you been qualified as an expert in the
2 courts in our State?

3 A Yes, sir.

4 Q And in what capacity have you been qualified as an
5 expert?

6 A An expert in the assessment and treatment of sex
7 offenders.

8 MR. THOMAS: Your Honor, we would like to move Dr.
9 Burke as an expert in the field of assessment and
10 treatment of sexual offenders.

11 THE COURT: Any voir dire?

12 MR. BOGLE: No, Your Honor, no objection.

13 THE COURT: He is so qualified of the assessment and
14 treatment of sex offenders.

15 Q Dr. Burke, have you had an opportunity to evaluate
16 Mr. Owen?

17 A On two previous occasions, yes.

18 Q As a matter of fact, you were involved in the initial
19 evaluation prior to him volunteering to go into the sexual
20 violent predator program?

21 A Yes, sir.

22 Q And since then have you had an opportunity to
23 supplement that evaluation of Mr. Owen?

24 A Yes, sir.

25 Q And he was brought to your facility?

1 A Yes, sir.

2 Q And you did an evaluation on him?

3 A I didn't do a full evaluation. Well I did a full
4 evaluation the first time. The followup evaluation I
5 didn't redo an entire evaluation. I just went over his
6 prior, I went to his chart that was brought to me from the
7 Department of Mental Health and interviewed him for three
8 hours.

9 Q And you reviewed the records from the Department of
10 Mental Health?

11 A Yes, sir.

12 Q And as a result of that evaluation were you able to
13 make a determination as to Mr. Owen's current condition?

14 A I was. If you could ask it in a different way maybe.

15 Q What were your findings?

16 A Well, essentially I felt, it was my professional
17 opinion that nothing had changed with Mr. Owen from the
18 time he had entered the program. And that was based on my
19 interview with him, in reviewing the chart what was
20 indicated was that primarily treatment was a ninety minute
21 group once a week. And I felt like it didn't meet the
22 standards of care that the association for the treatment
23 of sexual abusers establishes for treatment of sex
24 offenders. And I felt that it, that ninety minutes a week
25 for inpatient sexual violent predator program didn't seem

1 like, I mean on an outpatient basis my guys get two and a
2 half to three hours a week initially, sometimes eight
3 hours a week. So I felt like he was spending a lot of
4 time just for a ninety minute group once a week. So what
5 I said to you was that I felt like he could be, although
6 his status is an SVP in my opinion hasn't changed. I
7 think he still meets the criteria for pedophilia. And
8 that I think he has got some personality disorder issues
9 that are problematic. But beyond that we have people in
10 our program that are at the same level of risks or even
11 greater than Mr. Owen that have been maintained in the
12 community safely for a number of years.

13 Q So, it would be your opinion that he still has either
14 a mental abnormality or a personality defect?

15 A Right. Well, the thing about pedophilia is you never
16 get rid of it, you always have it. So the issue then
17 becomes can you properly treat it and you know approach it
18 as one would, maybe a physician would with diabetes to
19 control the symptoms and change your lifestyle. But you
20 are not going to, if there is any sort of treatment that I
21 am aware of today you are not going to have, wake up one
22 day and not have diabetes any more. And you are going to
23 be a pedophile the rest of your life. So the issue
24 becomes, in my opinion, one of treatment, control and
25 maintenance of containing those behaviors.

1 Q And in Mr. Owen's situation what would you propose as
2 a proper treatment plan for him?

3 A Well, some of the things that we do initially is an
4 extensive sexual abuse, I am sorry, sex offender, sexual
5 history polygraph. And that is very helpful because often
6 times we get a lot more information you get even from the
7 record. And then every six months and sometimes every
8 quarter, depending on the individual, they are polygraphed
9 to make sure that they are in compliance with our
10 treatment program to include, are they fantasize -- and
11 Your Honor, I have to say some sort of sexually explicit
12 words while we are here.

13 THE COURT: Go ahead.

14 A You know, is he masturbating to fantasies of
15 children, of his victims, is he fantasizing about coercive
16 sexual behavior, you know, across a variety of subjects.
17 So you have the capability of addressing some of the
18 behavioral components of pedophilia, whatever else,
19 whatever pedophilia he may have. In addition to that we
20 have two psychiatrist who provide medication management
21 and for all of our sex offenders if they don't have some
22 specific psychiatric disorder, primarily by-polar disorder
23 then there is a precaution there all placed on serotonin
24 and specific SSRI antidepressants to lower their sexual
25 drive and then we have some that are on other medications

1 to help control sexual drive or specific sexual urges.
2 Now in addition to that we do arousal reconditioning in a
3 plethysmograph laboratory and have success with that.
4 That success is short lived meaning you can reduce an
5 individual's arousal to children greatly through
6 behavioral techniques in the laboratory that research
7 indicates that are affective for six to nine months at a
8 time then you have to redo the process all over again.
9 There are other standard, other issues regarding standard
10 of care that are addressed. Now I must say that I know
11 most of the people at the Department of Mental Health, the
12 SVP program and they are fine people, they are fine
13 clinicians. I am not criticizing them personally, I think
14 it is a funding issue probably but just from my
15 prospective there is a lot that one can do to address
16 these disorders as opposed to a ninety minute group
17 primarily once a week.

18 Q And to your knowledge that is a program that they are
19 receiving?

20 A That is what I have been told, that is what I have
21 been told by Mr. Owen but also other guys that I have
22 evaluated. I went through his chart and other than some,
23 there was some sort of social work meetings and physicians
24 notes that really weren't specific to any treatment. It
25 was more like a checkup. What I saw is he participated in

1 the program and he participated in the group, that one
2 group a week. That is what I was provided, if there is
3 more I am not aware of it.

4 Q Right. So basically he is in a program where, an
5 inpatient program where he is housed twenty-four hours a
6 day for seven days a week and he is receiving ninety
7 minutes of therapy?

8 A That is my understanding.

9 Q Now, the program that you were describing through
10 your facility has, it is much more intensive it appears?

11 A Yes, it is.

12 Q And also that you require for it to be successful
13 compliance?

14 A Correct.

15 Q And so that is why you would use the polygraph. How
16 do you insure compliance I guess is maybe a better
17 question?

18 A Primarily through our polygraphy program which our
19 two pyelographers are active duty law enforcement officers
20 and they have gone through the eight week federal program
21 in Kentucky for post-conviction sex offender polygraph
22 specialist. From a financial perspective from me I don't
23 get a penny from the polygraphs, in fact I lose money when
24 they are polygraphed because we don't charge them for
25 their treatment that day because they are having to pay

1 for the polygraph. That, the cohesiveness of the
2 treatment team and the group members and individual
3 therapist keeping tabs on how a person is doing. We also
4 implement what we call a sex offender chaperone
5 certification program in which members of the family, if
6 it is appropriate, go through specific training, a
7 standardized training that the first part involves a four
8 hour instructional DVD and booklet and they have to pass a
9 competency exam that they understand the materials at the
10 end. They also have to sign documents endorsing they
11 believe that this particular offender is guilty of what he
12 has been adjudicated of. If it is not appropriate for a
13 family member then there are other people in the community
14 that usually through churches that will volunteer to be
15 chaperones. So what a chaperone does for the offender and
16 the community is, if the offender wants to go to church he
17 is only going to be there with the chaperone from the
18 church. If he needs to go to Walmart he gets the
19 chaperone to go with him to Walmart for example. So those
20 are some of the safeguards we have in place for the
21 population.

22 Q And I guess that your theory of treatment would fit
23 what you had stated earlier that once diagnosed like a
24 diabetic, once a diagnosis of pedophilia that doesn't
25 change?

1 A Right. Can you back up about my theory. I didn't
2 catch that because that concerns me.

3 Q Your theory of treatment in regards to the program
4 that you have established and the guidelines and the
5 security that you have put into that program would blend
6 with your previous statement that pedophilia is a
7 condition that you are going to have for the rest of your
8 life?

9 A Right. Let me just, I need to address my theory. I
10 am not sure what that means. Our treatment program is
11 taken directly from the standards of care. The only
12 exception to that is we sort of invited the chaperone
13 program. So other than that it is not my theory, it is
14 all research based. But to answer your question, yes, I
15 mean I have anywhere from 50 to 60 individuals with a
16 diagnosis of pedophilia and/or personality disorders that
17 are under our supervision and treatment.

18 Q You mentioned that standard of care was developed not
19 by you but by I guess research. How is that standard of
20 care developed?

21 A Well the association for the treatment of sexual
22 abusers is an international organization that is based out
23 of Oregon where all the individuals involved with the
24 assessment and treatment of sex offenders, not all but a
25 great many of them, you know they have their annual

1 conference, they put together a research journal and they
2 came up with the standards of care a number of years ago,
3 I believe 2003 and they got all the top individuals in the
4 world to come together and agree upon these are the things
5 that need to be addressed in treatment. And I mean they
6 came up with a 107 page book on that.

7 Q Right. And these are the things that you have
8 implemented in your treatment program?

9 A Yes, sir.

10 Q Now, specifically with Mr. Owen and you have seen the
11 Department of Mental Health's report in regards to Mr.
12 Owen's condition pursuant?

13 A I saw it about thirty minutes ago, yes sir.

14 Q Now, you would agree that he does have a diagnosed
15 mental illness?

16 A Yes, sir.

17 Q And you would agree that he does need treatment?

18 A Yes sir, I don't disagree with the report at all.

19 Q But do you feel that he needs or do you believe that
20 he needs to be securely confined in the treatment program
21 with the Department of Mental Health?

22 A Do I feel that he needs to be--

23 Q Let me ask you this. Can he be treated on an
24 outpatient basis?

25 A What I can say is that from my perspective I have got

1 many individuals who are at the same level of
2 dangerousness in my opinion of Mr. Owen, as Mr. Owen, who
3 have been maintained in the community successfully for
4 three to five years. As verified by no new allegations
5 and constant polygraphy.

6 Q Now, you are familiar with the sexually violent
7 predator statute?

8 A Yes, sir.

9 Q And the statute says that if the Court determines
10 that probable cause exist to believe that the person's
11 mental abnormality or personality disorder has so changed
12 that the person is safe to be at large. And if released
13 is not likely to commit acts of sexual violence. In Mr.
14 Owen's case do you believe that if he is treated on an
15 outpatient basis that he could, he would not be likely to
16 commit acts of sexual violence?

17 A Not as a blanket statement. I think with a specific
18 program with the kinds of safeguards that I am talking
19 about, it has been, since I have been involved with SVP
20 hearings what has been explained to me usually by the
21 Judges is that if there is a greater than fifty percent
22 chance a person will reoffend that is sort of where you
23 make the determination whether he should be contained in
24 the treatment facility or not. If we are going strictly
25 by that sort of guideline I think, I believe that he could

1 be maintained under that strict, the strict protocol that
2 I went through a moment ago with the addition of any
3 failure to do, to follow treatment recommendations or you
4 know whatever protocol is set into place that he could be
5 recommitted to an inpatient facility.

6 Q And you are talking about being recommitted under the
7 mental health statute?

8 A Yes, sir.

9 Q Do you think Mr. Owen would be better served under a
10 treatment program such as yours rather than the SVP
11 program?

12 A Well, better served, from the information that I have
13 been given he would get more treatment under our program
14 than he is presently getting. And I clearly don't want to
15 come across to say anything disparaging about the
16 clinicians, I mean I was paid by the Department of Mental
17 Health in 2007 or 2008 to go over there for four days and
18 give my recommendations on what to do with the program.

19 And I did that and part of that was, you know, these
20 standards of care. And they weren't implemented and what
21 I was told is that they didn't have the funding to do it.

22 Q So I guess the question more properly might be that
23 you could provide more care than is able to be provided
24 with the Department of Mental Health?

25 A With the information that I have available to me I

1 would agree with that.

2 Q And is it your opinion that Mr. Owen would be a
3 candidate for your program?

4 A A candidate for my program. If the guidelines were
5 put in place as I had mentioned I would say yes.

6 Q And under those conditions you don't feel that it
7 would be necessary to continue his placement in the
8 sexually violent predator program?

9 A What I can say is I would be willing to accept him
10 under those conditions. Ask me the question again, I am
11 not sure.

12 Q Basically we have two situations. We have got that
13 he is currently in the sexually violent predator program.
14 And we are asking the Court to allow Mr. Owen to be
15 treated under a program such as the one that you have
16 available. And do you believe that the program that you
17 have available that Mr. Owen could participate in is
18 appropriate or more appropriate than the program that he
19 has as a sexually violent predator?

20 A I would say it is appropriate under the guidelines
21 that I explained earlier.

22 MR. THOMAS: Your Honor, if I beg the Court's
23 indulgence.

24 THE COURT: Sure.

25 Q Under the condition of the guidelines that you have

1 presented to the Court today you would be willing to take
2 Mr. Owen into your program?

3 A I would. But let me be very clear, I have no problem
4 going back to a Judge and saying, this guy needs to go
5 back into the program, I have no problem doing that at
6 all. I do it all the time. In fact, just to give you
7 some rough numbers. I get about four or five new sex
8 offender clients a week. Okay. And at the end of the
9 year I have discharged, recommended incarceration for over
10 a third of them. And it usually happens within the first
11 ninety days. I have no problem, if someone doesn't follow
12 the protocol it is my duty to do what I can to get them
13 off the street.

14 Q I have no further questions.

15 THE COURT: All right. Mr. Bogle.

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

17 CROSS-EXAMINATION

18 By Mr. Bogle:

19 Q Dr. Burke, let's make sure we are on the same page
20 here on a couple of things. In the course of your
21 preparing and to render an opinion today did you review
22 the prior pleadings in the case that got him committed.
23 In other words, the petition alleging to be a sexually
24 violent predator?

25 A I did, well, I reviewed it thirty or forty minutes

- 1 ago. But a couple of years ago I did, yes.
- 2 Q So basically, when we had the jury trial here in this
3 courtroom to see if this man should be committed you were
4 retained by the defense to be an expert witness to testify
5 on his behalf at that hearing, were you not?
- 6 A I was.
- 7 Q And isn't it true that during that hearing
8 information came out about a conviction that you did not
9 know about and you withdrew your opinion and could not
10 help the defense and did not so testify, correct?
- 11 A That is correct.
- 12 Q And Mr. Owen's, a number of convictions and mental
13 health diagnosis back then has not changed from then to
14 now, has it?
- 15 A That is my understanding.
- 16 Q The convictions hasn't gone away and he is still a
17 pedophile?
- 18 A Yes, sir.
- 19 Q Okay. And the convictions as I understand them would
20 be a lewd act on a child, conviction in Newberry County,
21 correct?
- 22 A That is what I remember, yes sir.
- 23 Q Lewd act on a child in Berkeley County?
- 24 A Yes, sir.
- 25 Q Both of those involve the same victim, is that right?

- 1 A Yes, sir.
- 2 Q A sexual conduct charge on his daughter in Delaware,
3 right?
- 4 A Correct.
- 5 Q And then failure to register as a sex offender in
6 Charleston County?
- 7 A Correct.
- 8 Q Four things on the convictions we are talking about.
9 And so had you studied the sentencing sheets that were
10 handed down on him?
- 11 A Studied the sentencing sheets?
- 12 Q Have you looked at them?
- 13 A Show me and I will let you know.
- 14 Q Have you looked at them, the sentencing sheets?
- 15 A If you show them to me I will tell you if I have.
- 16 Q I hand you the sentencing sheet for Newberry County.
17 And the sentencing sheet for Berkeley County. These are
18 both lewd act charges I talked about a minute ago.
- 19 A Okay. I don't specifically recall this however a
20 couple, well yeah, I can't say for sure if I did because
21 as you noted earlier I wasn't given all the information
22 initially.
- 23 Q Well, let's take a minute. On the Newberry County
24 sentencing sheet, in the middle of the page where it
25 commits him to the Department of Corrections, it commits

- 1 him for twelve years. Do you see that?
- 2 A Right.
- 3 Q And there is nothing, none of the blocks about
4 probation are checked?
- 5 A Correct.
- 6 Q Do you see that?
- 7 A Yes, sir.
- 8 Q And the one about Berkeley County he is committed for
9 fifteen years provided with the services of twelve years.
10 So it is fifteen but he has to serve twelve. Do you see
11 that in the middle of the page?
- 12 A Yes, sir.
- 13 Q And there is nothing about probation?
- 14 A Correct.
- 15 Q Are you familiar with something called Jessie's law?
- 16 A Yes.
- 17 Q And isn't it true that Mr. Owen's convictions
18 occurred prior to the enactment of Jessie's law?
- 19 A Yes, sir.
- 20 Q And so therefore he would not be subject to mandatory
21 controlled supervision. He just serves his time, he gets
22 done with his prison time, he gets out and he is free to
23 go on the streets. Is that right?
- 24 A I believe that is correct.
- 25 Q So there is no, the mandatory two-year community

1 supervision which would apply to a sex offender like him
2 had he been convicted after the passing of Jessie's law
3 doesn't apply to him?

4 A Correct.

5 Q So there is no pending court order of any type, be it
6 probation, be it community supervision, anything like that
7 hanging over his head to enforce any kind of sex offender
8 treatment on the outside, is there?

9 A I am not sure about that because of the existing
10 civil commitment laws for mental illness may apply and I
11 am not an attorney.

12 Q Well, let's talk about that. For a civil commitment
13 to apply somebody has to initiate the civil commitment,
14 right?

15 A Right.

16 Q It just doesn't happen automatically?

17 A Right.

18 Q And it means you have to bring a petition to Probate
19 Court by you or by some other interested party, that the
20 person is a danger to himself or to others, correct?

21 A Correct.

22 Q And so he has to be a danger about to commit a crime
23 or committed a crime for that to come into effect, right?

24 A Say the last two sentences over for me again, please.

25 Q I am sorry?

- 1 A Repeat the last two sentences.
- 2 Q For you or any other interested person to bring an
3 action to Probate Court, commit this person somewhere he
4 would have to be a danger to himself or others, correct?
- 5 A Correct.
- 6 Q And if you don't do that right now there is no
7 circuit court order imposing say so many years of
8 probation unless you comply with certain conditions, no
9 such order is out there, right?
- 10 A Not to my knowledge, right.
- 11 Q And there is no mandatory community supervision which
12 can be used to revoke his liberty, is there?
- 13 A Not right now, correct.
- 14 Q So nothing is hanging over his head unless somebody
15 initiates or starts a brand new program and that would not
16 commit him to sexually violent predator treatment program,
17 would it?
- 18 A I don't know, I am not an attorney.
- 19 Q You are not an attorney, okay. Doctor, in evaluating
20 the level of treatment he is getting, did you attend any
21 of the group treatment sessions he goes to?
- 22 A No, sir.
- 23 Q Did you ask permission to be allowed to attend any of
24 those?
- 25 A No, sir.

1 Q Who did you talk to at Mental Health that conducts
2 those treatment sessions?

3 A I didn't.

4 Q You didn't?

5 A I just read his notes.

6 Q Read his notes. Okay. Is he admitting the crimes to
7 you in your interviews with him?

8 A He is now.

9 Q He is now?

10 A Wasn't before.

11 Q Is he admitting oral sex with his daughter?

12 A I can't say specifically right now.

13 Q Is he admitting anal sex with his son?

14 A I can't say specifically right now.

15 Q Well he is or isn't?

16 A Well, I don't know because I haven't interviewed him
17 in over seven months.

18 Q When did you last interview him?

19 A May, I believe.

20 Q Okay. Because this case was set for a hearing on
21 June 9th and got postponed for your evaluation to be
22 complete.

23 A Right. It was in May.

24 Q Have you seen him since June?

25 A No, sir.

1 Q Back when you saw him in June did he admit to doing
2 these things to these two children. The anal sex on his
3 son and the oral sex on the little girl?

4 A I don't recall that he did.

5 Q Okay. Within the parameters of your professional
6 opinion, as clarified by the Judge of your expertise, do
7 you have an opinion to a reasonable degree of certainty
8 within the parameters of your expertise as to whether or
9 not he still has a mental abnormality of pedophilia?

10 A I believe that he does.

11 Q Okay. Again, in your opinion has that mental
12 abnormality so changed that he is safe to be at large?

13 A Safe to be at large.

14 Q Safe to be at large as walk out the door?

15 A Well, no. I don't believe he is safe to walk out the
16 door unsupervised.

17 Q So you believe, do you believe he is safe to walk out
18 the door and enter a program like yours where there is a
19 mandatory and you want something hanging over his head
20 that will make him go and if he drops out he might be
21 locked up?

22 A Right.

23 Q And you understand that there is nothing that would
24 lock him up in the jail right now if he doesn't go to the
25 program or any other program?

1 A Well, again I am not an attorney. My understanding
2 is there may be a mechanism to do that.

3 Q Well, but the mechanism that you are thinking of is
4 civil commitment through the Probate Court?

5 A Right.

6 Q Which would have to be initiated by you or some other
7 party?

8 A Right.

9 Q In fact he could have left the program and go to
10 some, go to another program, could he not?

11 A Well I think if, yeah, that is a possibility.

12 Q I believe you said that you read Dr. Marie Gehle's
13 report that came with this annual review and you don't
14 substantially disagree with it, do you?

15 A No, not at all.

16 Q Okay. Thank you, Doctor, no further questions.

17 REDIRECT EXAMINATION

18 By Mr. Thomas:

19 Q Now, Dr. Burke, you have been involved with this case
20 for a long time, haven't you, you have been involved with
21 Mr. Owen for a long time?

22 A Yes, sir.

23 Q As a matter of fact you have been involved with him
24 ever since he was voluntarily ordered to the program back
25 before February 3rd of 2010?

- 1 A I was involved with him prior to that.
- 2 Q So we are talking about 2010, 2011 and 2012. You
3 have been involved with him in some manner for at least
4 two plus years?
- 5 A Well, my first contact with Mr. Owen was, I don't
6 have it in front of me but it was after his first
7 conviction and he didn't show up for treatment and I
8 turned him into probation for not showing up.
- 9 Q But the thing is is that you had, you did a full
10 evaluation for the sexually violent predator trial that
11 you were retained for?
- 12 A Correct.
- 13 Q And since then you have reviewed all of the notes
14 that you have had that were brought with him from the
15 Department of Mental Health?
- 16 A Yes.
- 17 Q And you have personally interviewed Mr. Owen?
- 18 A Right.
- 19 Q And based upon your past treatment and your knowledge
20 in regards to sexual offenders which I guess you are
21 probably more knowledgeable than anybody else in the State
22 of South Carolina?
- 23 A I can't say that.
- 24 Q But you have been involved in this field of study for
25 many years?

- 1 A Right.
- 2 Q And it is your opinion today that Mr. Owen under
3 these conditions that you have outlined could be safely
4 admitted into your program?
- 5 A Right, with the safeguards that I mentioned.
- 6 Q Right. And if he was not to comply that you would
7 like to have or you need the ability to be able to pick up
8 a phone and call someone?
- 9 A Well more than that I would like for a mechanism to
10 be in place where he could be removed from--
- 11 Q And the thing that you had discussed with me was
12 there would be either a court order and/or could be
13 brought back and confined so to speak for inpatient
14 treatment through the Department of Mental Health?
- 15 A Correct.
- 16 Q Now, Mr. Bogle asked you about the Probate Court,
17 Probate code, did he not?
- 18 A Yes, sir.
- 19 MR. THOMAS: Your Honor, may I approach?
- 20 THE COURT: Yes.
- 21 Q Let me show you this and see if you can identify
22 that.
- 23 A Well, again I am not an attorney but this appears to
24 be the civil commitment law for individuals, the mental
25 health statute.

- 1 Q And is that section 44-17-580?
- 2 A Yes, sir.
- 3 Q Now, if you look at 44-17-580 it is captioned
- 4 hospitalization of a person, Court finds mental illness or
- 5 other condition.
- 6 COURT REPORTER: I am sorry, I can't hear you, can
- 7 you repeat your question?
- 8 Q 44-17-580 is captioned hospitalization of a person if
- 9 the Court finds mental illness or other conditions?
- 10 A Correct, yes sir.
- 11 Q And if you look at A.
- 12 A Yes, sir.
- 13 Q It says the Court finds upon a clear and convincing
- 14 evidence that the person is mentally ill, needs
- 15 involuntary treatment in the cause of his condition? Do
- 16 you see that part?
- 17 A Yes, sir.
- 18 Q And then it has 1 and 2?
- 19 A Right.
- 20 Q And what does 1 say?
- 21 A Lacks sufficient insight or capacity to make
- 22 responsible decisions with respect to his treatment.
- 23 Q And what does 2 say?
- 24 A There is a likelihood of serious harm to himself or
- 25 others.

- 1 Q And does it say, between 1 and 2 does it say and?
- 2 A It says or.
- 3 Q Or. So pursuant to the statute he could be
- 4 hospitalized if he lacks sufficient insight or capacity?
- 5 A That is how I read it, yes sir.
- 6 Q So it doesn't have to be a threat, does it?
- 7 A I am not an attorney but that doesn't appear to say
- 8 he has to be a threat.
- 9 Q So your treatment plan and I apologize for not maybe
- 10 knowing all of this, your treatment plan for Mr. Owen
- 11 would provide for him those things that you have outlined
- 12 to the Court?
- 13 A Yes, sir.
- 14 Q Including I think you mentioned a GPS monitoring?
- 15 A Yes, sir.
- 16 Q Is that a condition of your program?
- 17 A Yes, sir.
- 18 Q So he would be monitored?
- 19 A Yes, sir.
- 20 Q And you also mentioned a chaperone program?
- 21 A Yes, sir.
- 22 Q And he would be chaperoned?
- 23 A Yes, sir.
- 24 Q And you are willing to accept him into that program?
- 25 MR. BOGLE: Your Honor, this has all been asked and

1 answered and I think it is beyond on what I did on cross.

2 MR. THOMAS: I will move on. Your Honor, I have one
3 or two more questions so we can move on.

4 Q Dr. Burke, counsel from the State had asked you
5 whether or not you had seen the sentencing sheets and
6 those types of things. Is it necessary for you to make a
7 diagnosis or opinion based upon the sentencing sheets?

8 A Based upon the sentencing sheets to make a diagnosis?

9 Q Right.

10 A Not necessarily at all, no.

11 Q Your diagnosis would come from the testing, the
12 interviews and the treatment plan that he has participated
13 in so far?

14 A Well his diagnosis would come from him meeting the
15 criteria of the DSM4 diagnosis.

16 Q And it is your opinion that he does have a diagnosis
17 of pedophilia of a mental illness?

18 A Yes, sir.

19 MR. THOMAS: Your Honor, I have no more questions.

20 MR. BOGLE: Your Honor, I have one.

21 REXCROSS-EXAMINATION

22 By Mr. Bogle:

23 Q As I understand from redirect examination just now
24 his history with you, back when he was enrolled in your
25 program was that he didn't show up and you had to turn him

1 in?

2 A Yes, sir.

3 Q Thank you, Your Honor.

4 THE COURT: You can step down.

5 MR. THOMAS: Your Honor, that is all I have.

6 THE COURT: Y'all want to summarize anything.

7 MR. BOGLE: We are prepared to call Dr. Gehle's
8 testimony in response, Your Honor.

9 THE COURT: Okay.

10 MR. BOGLE: We call Dr. Marie Gehle.

11 MARIE GEHLE, being
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 By Mr. Bogle:

15 Q Dr. Gehle, who are you employed by at the present
16 time?

17 A South Carolina Department of Mental Health.

18 Q What is your title there?

19 A I am a Chief Psychologist.

20 Q What is your educational background or what degrees
21 do you hold?

22 A I have a Bachelors in Psychology from Ohio Northern
23 University, a Masters in Psychology from Xavier University
24 and a Doctor of Psychology from Xavier University.

25 Q How long have you been licensed as a psychologist in

1 the State of South Carolina?

2 A Since 2010.

3 Q Do you have license in any other jurisdictions?

4 A Yes. I am licensed in Georgia and South Carolina.

5 Q Are you also engaged in the field of forensic
6 psychology?

7 A Yes, I am.

8 Q When I use the word forensic and attach the word,
9 psychology, what am I talking about?

10 A It is just the application of psychological
11 principals to the law.

12 Q Have you been previously recognized by the circuit
13 courts of this State as an expert in the field of
14 psychology and forensic psychology?

15 A Yes, I have.

16 Q About how many occasions?

17 A About, around 20 times.

18 MR. BOGLE: Your Honor, at this time I would ask that
19 Dr. Marie Gehle be qualified as an expert witness in the
20 field of psychology and forensic psychology.

21 THE COURT: Any voir dire?

22 MR. THOMAS: No, sir.

23 THE COURT: She is so qualified.

24 Q Now, do you recognize the name, a man named Ronald
25 Owen?

- 1 A Yes, I do.
- 2 Q He is currently a resident in the sexually violent
3 predator treatment program run by the Department of Mental
4 Health?
- 5 A Yes, he is.
- 6 Q And in that capacity were you called upon to do an
7 annual review report, a treatment report of his situation
8 in that program?
- 9 A I was called to do an annual review evaluation, yes.
- 10 Q And is this, is exhibit number 3 which is in
11 evidence, is this a copy of your report dated March 31 of
12 2011?
- 13 A Yes, it is.
- 14 Q Have you examined him, met with the guy face to face
15 pursuant to your evaluation?
- 16 A Yes, I did.
- 17 Q Is he in the courtroom today?
- 18 A Yes, he is.
- 19 Q Where is he sitting?
- 20 A Sitting next to his attorney.
- 21 Q Okay. Now what kind of documentary information, I am
22 going to break it down into three parts. First of all,
23 you interviewed Mr. Owen, correct?
- 24 A Correct.
- 25 Q About how long does that take or does it happen more

1 than once?

2 A I interviewed him on March 4th of 2011 for two hours
3 and fifteen minutes.

4 Q And part two, did you review documents and written
5 information about Mr. Owen's background, his legal history
6 and his treatment history at the SVP unit?

7 A Yes, I did.

8 Q What type of stuff did you look at?

9 A I looked at all of the legal records, the sentencing
10 sheets, the incident reports, the witness statements, I
11 looked at the referral form from the MDT, the petition
12 that the attorney general's office filed. I also reviewed
13 the supplement to that petition, records from the
14 Department of Corrections, the precommitment evaluation by
15 Dr. Wadman, penile plethysmograph report by Dr. Gassen,
16 his criminal history report and then all of the available
17 records from the sexually violent predator program.

18 Q Are these records which are typically relied upon by
19 experts in your field?

20 A Yes.

21 Q In addition to the third part then did you also talk
22 to or interview the people who are assigned to be treating
23 him or evaluating him or working with Mr. Owen at the SVP
24 treatment unit?

25 A I did talk to them by email or by phone.

1 Q And does interviewing these treatment providers is
2 that also a necessary thing for you to do in forming an
3 opinion about Mr. Owen's status?

4 A Well, I always check in with the therapists to get an
5 update but often times I will read their progress notes
6 and ask questions if there is anything they need
7 clarified.

8 Q Now in this particular case, you heard me outline to
9 Dr. Burke the different crimes Mr. Owen was convicted of.
10 There was four of them that were relevant to this
11 proceeding, do you agree with that, the four that I
12 outlined?

13 A Yes.

14 Q And at least two of these, the lewd act on a child
15 are sexually violent crimes, is that correct?

16 A Correct.

17 Q And did one of them involve his son, ~~James Owen~~?

18 A I believe that two of them involved, yes.

19 Q Two of them involved--

20 A Yes, two lewd acts that he plead no contest to.

21 Q I believe the situation was was that Mr. Owen was in
22 some kind of driving business, a truck driver or something
23 like that and he would take ~~James Owen~~ to different counties.
24 That is why we have convictions in more than one county,
25 is that correct?

1 A It is my understanding that he was offending against
2 in multiple counties in multiple states but he was
3 convicted in several counties here.

4 Q In fact they tried to investigate and they made an
5 arrest in Spartanburg County but could not really tie the
6 actions to any specific landmark there and couldn't really
7 bring those, complete that charge, isn't that correct?

8 A Correct. They were relying on account of
9 where the acts took place.

10 Q Based upon your evaluation and your review of the
11 prior evaluation done, precommitment by Dr. Wadman do you
12 have an opinion to a reasonable degree of psychological
13 certainty as to whether or not Mr. Owen suffers from a
14 mental abnormality or a personality disorder?

15 A Yes, I do.

16 Q What is the mental abnormality or personal disorder
17 or both if both exist?

18 A Well, specifically relevant to the SVP act he is
19 diagnosed with pedophilia, sexually attractive to both.
20 That means that he is sexually attracted to male and
21 females. His known sexual behaviors have been limited to
22 incest meaning family members and he does not prefer
23 children to adults or he doesn't exclusively engage in sex
24 acts with kids. He also engages in sex acts with adults.
25 He is also diagnosed with a personality disorder not

1 otherwise specified.

2 Q What does that mean, personality disorder not
3 otherwise specified. What are the symptoms of that?

4 A In his case it means, he doesn't meet criteria for a
5 specific personality disorder. He shows some narcissistic
6 traits, lots of entitlement, very self-focused.

7 Q When it comes to your interviews with him and Dr.
8 Wadman's, the precommitment interview also is Mr. Owen
9 admitting to the crimes that he committed against his son
10 and against his daughter?

11 A What I found very striking was at the precommitment
12 stage he was not admitting to really any sex acts against
13 the kids, his two victims. But when I interviewed him, I
14 guess it would be a year or so later, it was his first
15 annual review he is admitting to some sex acts against the
16 kids but not to the extent reported by the victims.

17 Q So he is still denying some sexual, he is still
18 denying some sexual acts or some type of sexual act
19 against at least one of the victims?

20 A Well, he is denying any penetration of the daughter
21 and he is denying any anal sex with the son.

22 Q How was he participating, was it necessary for you to
23 try to get a handle on how he is participating in
24 treatment in order for you to render an opinion today?

25 A Not necessarily.

1 Q Well how is he participating in the treatment, what
2 is he doing, what is his attitude in treatment based on
3 the information that you have collected?

4 A Well, it is my understanding that he has made minimal
5 progress, he is not admitting to the acts involved. He is
6 disclosing more, we are going from a place where he was
7 denying almost everything to he is admitting to some
8 things so I would expect, you know, even more to come out.
9 He is rather avoidant in group, he denies the severity of
10 the offenses, he denies the severity of the harm caused to
11 his victims, he is still tending to blame the victims
12 saying that they initiated the acts. He recently refused
13 to do an assignment saying, you know, he just had an
14 independent evaluation so he was not going to do this
15 assignment, he was kind of pinning I guess future of
16 getting out of the program on that.

17 Q So in order words because he has recently seen Dr.
18 Burke he is kind of thinking I am going to get out, he has
19 kind of lapsed off of his assignments?

20 A That is how I would interpret that behavior.

21 Q Okay.

22 A It is my understanding that he was given an empathy
23 assignment in June and by January he is still working on
24 that assignment. So, many months. And much of the
25 treatment is self-focused. It is sitting down and doing

1 it yourself. You know, the therapists tries to talk to
2 them about what they need to work on, what they need to
3 think about and help them come to insights as to why they
4 did what they did. But a lot of that is them sitting down
5 and really thinking about what was going on in their life,
6 why they did what they did.

7 Q Now, has he shown any appreciation for the harm that
8 he caused his victims?

9 A I would say minimal.

10 Q Does he still have progress to make in that
11 direction?

12 A Absolutely.

13 Q And is showing appreciation for the harm he did to
14 his victims as well as acknowledging what he did are these
15 steps forward in the progress for treatment for this type
16 of situation?

17 A I think so. In so far that that is what usually
18 prevents people from acting out against one another
19 knowing that you are going to hurt somebody and wanting to
20 avoid that.

21 Q Has he learned to control his defiant sexual urges?

22 A Well, he actually in some aspects denies having any
23 defiant sexual urges. He says that he just acts
24 impulsively, he was aroused and his daughter came in the
25 room so he acted out.

1 Q Let me get this straight. So he is aroused, he wants
2 a sexual release, his wife is in the building, his
3 daughter walks in the room and he uses her?

4 A That is in part what he said to me.

5 Q Okay. How does this place him, in your opinion as an
6 expert witness, regarding his safeness to be at large?

7 A I think it makes him particularly dangerous in that
8 he is saying that when the mood struck him, you know,
9 whoever was around was who he was going to act out with.

10 Q In your opinion to a reasonable degree of
11 psychological certainty, does Mr. Owen's mental
12 abnormality of pedophilia continue to remain such that it
13 affects his emotional or capacity as a sexually violent
14 offenses and has difficulty controlling his behavior? Is
15 it still a problem?

16 A Yes. He, several things that he told me, he called
17 it an almost irresistible urge. He made attempts to stop
18 the behavior but then began again and this is specific to
19 his daughter. He said things that he knew it was wrong
20 but he did it anyway.

21 Q Has his mental abnormality, pedophilia, so changed
22 that he is safe to be at large?

23 A I don't believe so.

24 Q Is there anything that you are aware of of a criminal
25 record that would be hanging over his head, some kind of

1 court order, some kind of lock him up, he doesn't qualify
2 or doesn't participate court order out there that would be
3 hanging over his head if he was released and forced to go
4 to sex offender treatment?

5 A Well, from my understanding of the statute it is an
6 all or nothing commitment. They are either in the program
7 or they are not. I am not asked to evaluate whether they
8 would benefit in a less restrictive environment. It is
9 either they are committed or they are not committed.

10 Q So it is a mental abnormality, pedophilia, is it
11 still there?

12 A Yes.

13 Q Has it changed in any way to make him safe to be at
14 large, in your opinion, having reviewed his records,
15 talked to him and talked to his treatment providers?

16 A Not in my opinion, no.

17 Q Thank you, Doctor, please answer any questions
18 counsel may have or the Judge may have.

19 THE COURT: Mr. Thomas.

20 CROSS-EXAMINATION

21 By Mr. Thomas:

22 Q Doctor, you said that you were licensed in South
23 Carolina in 2010, is that correct?

24 A Yes.

25 Q How long have you been involved with the Department

1 of Mental Health with their sexually violent predator
2 program?

3 A I have been employed there since November of 2009.

4 Q 2009?

5 A Yes.

6 Q Now, you said in your examination, what you do in
7 making a determination and compiling your report is that
8 you met with Mr. Owen for two hours in March of 2010 or
9 2011?

10 A Correct.

11 Q And then you review the documents that you are
12 provided which would be basically a file, the medical file
13 that they would have on Mr. Owen?

14 A Well, the medical file for the program but also the
15 legal file that we keep.

16 Q And that would be the same medical file that would
17 have been sent with Mr. Owen when he was evaluated by Dr.
18 Burke?

19 A Okay, again I don't know what Dr. Burke was provided.
20 But I reviewed his medical file or his file that the
21 program keeps those records but also many additional
22 documents.

23 Q Are those additional documents provided to Mr. Owen?

24 A I don't know.

25 Q So are there documents out there that we won't have

1 access to?

2 A I have no idea what you have access to and what you
3 don't have access to.

4 Q Is it, could it be your testimony that you are making
5 your opinion based upon documentation that is in a legal
6 file that is not provided to Mr. Owen?

7 A Many of the documents in this legal file were given
8 to us from the Attorney General's office, that is how we
9 get most of the records at the precommitment stage, they
10 are provided by the Attorney General. It is my
11 understanding, although I am not specifically you know
12 sure of this, but I believe that both sides are provided
13 with that and offend when I do precommitment evaluations
14 the person that I am evaluating tells me that they did
15 receive these documents. I am not sure if they received
16 everything that I received but when I request extra
17 records at the precommitment stage I request those through
18 the Attorney General's office.

19 Q But those documents that you would have reviewed in
20 that legal file are not contained in his medical file, is
21 that correct?

22 A Correct.

23 Q So that is something separate?

24 A Correct.

25 Q Now, in reviewing these documents I know that counsel

1 had asked Dr. Burke if he attended any of his, I guess
2 treatment sessions. Did you attend any of Mr. Owen's
3 treatment sessions?

4 A I have attended treatment sessions. I don't believe
5 that I have attended that Mr. Owen was present at.

6 Q And you did talk with individuals, you said and
7 treatment providers?

8 A Yes.

9 Q And you said that you did that by via telephone or by
10 email, is that correct?

11 A Yes.

12 Q Now, what type of program do they have, how much
13 therapy does Mr. Owen receive in a program that he is in?

14 A I don't work specifically in the program. I work for
15 the forensic evaluation service so I have some knowledge
16 of the treatment program but I am not going to be able to
17 answer all of your questions. It is my understanding that
18 they have maybe two hours of sex offender specific group
19 work a week. They are given assignments to do that work
20 on their own, much of the work on their own and they get
21 feedback on their assignments. They also participate in
22 activity therapy, things to help them to have a more full
23 life.

24 Q Which would be like exercise or games or social type
25 activities?

- 1 A Correct.
- 2 Q Would Mr. Owen benefit from more therapy?
- 3 A I don't know. That is a good question. At this
4 point he is not even doing what I would consider the very
5 minimum. He is not admitting to the offenses as the
6 victims report them. So until he is saying that he has a
7 problem I don't know if any treatment will help.
- 8 Q But you said that he has made changes since he first
9 came the system, is that correct?
- 10 A He has made admission. He is admitting to some
11 things much more so than he was at the precommitment
12 evaluation level.
- 13 Q Let me ask you, do you have your report in front of
14 you?
- 15 A Yes.
- 16 Q Now, you say, look at the bottom of page five, it
17 says SVP treatment summary?
- 18 A Yes.
- 19 Q And you say that he has been active in sex offender
20 treatment groups in unit activities. According to his
21 group therapist he is eager to work.
- 22 A Yes.
- 23 Q Is that true?
- 24 A It was true at that time.
- 25 Q Have you seen him since 2011?

- 1 A No, I haven't.
- 2 Q Okay.
- 3 A I did speak to his therapist yesterday.
- 4 Q Okay. And you also, while we are on that report on
5 page five, if you look at the previous psychological
6 assessments, do you see that?
- 7 A The physiological assessment?
- 8 Q Yes, I am sorry, physiological assessments.
- 9 A Okay.
- 10 Q And he took a plethysmograph, PPG?
- 11 A Correct.
- 12 Q In October of '09?
- 13 A Yes.
- 14 Q And you say that a notable flat profile, resulted in
15 a notable flat profile, does that mean that he didn't
16 respond?
- 17 A That means that he did not respond to really anything
18 and they do present what we would be considered arousing
19 to, you know, a typical male and then also go into the
20 deviant categories. So he didn't respond to anything.
21 That is my understanding of that.
- 22 Q So according to your report he didn't have any
23 response to any deviant?
- 24 A This is quoted from that PPG report. He didn't have
25 any response at all.

- 1 Q All right. And then if we look at risk assessment.
- 2 A Yes.
- 3 Q About half way down in the middle of the paragraph it
- 4 says Mr. Owen's score on the Static-99R places him in the
- 5 low to moderate risk category.
- 6 A Correct.
- 7 Q So the testing on the Static-99 places him into the
- 8 low to moderate risk?
- 9 A Yes.
- 10 Q Are there many people out in the community that have
- 11 low to moderate risk?
- 12 A I am sure there are. It is also many people in the
- 13 program that have low to moderate risks.
- 14 Q Now, let's go to page six and look at the top to
- 15 where it says mental status examination and interview.
- 16 A Yes.
- 17 Q If you come to the bottom of that paragraph it says
- 18 that he states that he is not prescribed any psychiatric
- 19 medications.
- 20 A Correct.
- 21 Q So is it true to say that he is not diagnosed with
- 22 bipolar or any other type of mental condition, mental
- 23 disorder?
- 24 A Correct.
- 25 Q Is it true that the diagnosis of bipolar or other

1 mental illnesses would make a condition of pedophilia more
2 difficult to treat?

3 A It depends.

4 Q It could be a very complicated factor though,
5 couldn't it?

6 A I mean I guess so.

7 Q Would it be a positive thing in Mr. Owen's situation
8 that he is not diagnosed with some other type of mental
9 illness for which he is taking medication?

10 A I think it is certainly in his benefit that he is
11 not. You know, he doesn't have to take medication. He
12 doesn't have to deal with those symptoms.

13 Q All right. You also say, I guess in the next
14 paragraph, he said in the end of the first paragraph, the
15 first sentence, I am sorry. He said he volunteered
16 because he needed help.

17 A Yes.

18 Q Is that an admission that he has a problem and he
19 needs help for that condition?

20 A It sounds like it, yes.

21 Q Now, if we can go to page eight. And if you would
22 look where it says opinion. Based on evidence that Mr.
23 Owen has a mental abnormality personality disorder is
24 likely to sexually reoffend the Court previously
25 determined that he met the criteria of SVP.

- 1 A Yes.
- 2 Q But that is not correct, is it?
- 3 A Are you saying because he actually signed himself in?
- 4 Q Right.
- 5 A Well he did sign, I believe that would be a legal
6 document that put him into the program.
- 7 Q But he agreed to go into the program, is that
8 correct?
- 9 A I think he agreed to waive a trial. I don't know, we
10 don't take people in the SVP program who, you know, is
11 just off the street. They don't just volunteer to come,
12 they wouldn't be allowed, they wouldn't be granted access.
- 13 Q If a individual volunteers for the SVP program does
14 that make his situation in regards to treatment more
15 positive?
- 16 A I don't think so.
- 17 Q You don't?
- 18 A No.
- 19 Q Wouldn't volunteering for the program be some
20 indication that you needed help?
- 21 A We have people who volunteer for the program for a
22 variety of different reasons. Sometimes we have one
23 resident who volunteered or who signed himself in who
24 waived the right to trial because his mother was in the
25 courtroom and he didn't want to talk about his sexual

1 offenses in front of her. I mean there are people who
2 waive their right to trial for a variety of reasons. And
3 I don't know that it always means that it is a positive
4 treatment indicator.

5 Q But that is not the case in Mr. Owen's situation, is
6 it, because on page six you said he volunteered because he
7 needed help?

8 A Well, that is what he told me but I don't know if
9 that is his true reason or if that was his reason at the
10 time. I mean that is what he told me after he had been in
11 the program for a while.

12 Q Let me ask you this. How many therapists have they
13 had at the sexually violent predator within the last year?

14 A I have no idea.

15 Q Are you familiar with the turnover rate for
16 therapists in the program?

17 A I don't know what the turnover rate is. It is hard
18 to keep therapists employed with the program, definitely.

19 Q Do you know whether or not each individual therapist
20 would have their own, I guess, for a lack of better words
21 program. Would they go in and start the program over
22 again?

23 A No.

24 Q But if there is a break in therapists is there a
25 break in treatment?

1 A I don't know.

2 Q Do you know whether or not the therapists are making
3 these individuals start all over again?

4 A I don't know specifically. They shouldn't have to.
5 Now, they might need to get some, have a resident do
6 another disclosure. You know, talk about what their
7 offenses were. But that is an expectation for all the
8 residents that, who are in the treatment program that they
9 be comfortable with disclosing their offenses when asked.

10 Q If you had a high turnover rate in the program and if
11 each therapist wanted them to start all over again in some
12 capacity or some portion would somebody ever be able to
13 complete the program?

14 A Well I think the high turnover rate, I mean if it is
15 high, the fact that therapists come and go from the
16 program has always been the case and there has been about
17 70 discharges, roughly 70 discharges based on
18 recommendations by the program so I don't think that that
19 would be the case. I think they still are able to
20 recommend discharge for people despite, you know,
21 therapist coming in and out.

22 Q You know Dr. Burke?

23 A I have never met him, no.

24 Q Are you familiar with this program at all?

25 A Just from some colleagues that went to train with him

1 and, you know, I have read some newspaper articles about
2 him and some of his reports.

3 Q And you work for the Department of Mental Health?

4 A Yes.

5 Q Now, the goal of your program I guess would have two
6 prongs. The sexually violent predator program would have
7 two prongs, one would be safety. Safety for the citizens
8 of the State of South Carolina? Is that correct?

9 A Are you asking me a question?

10 Q Yes.

11 A What the law says is that they are there for care,
12 control and treatment.

13 Q All right. And the other portion would be for
14 treatment, like what you just said, care and control and
15 treatment?

16 A Care, control and treatment.

17 Q Care, control and treatment. Okay. And if there is
18 a less restrictive alternative than the SVP program would
19 that be appropriate?

20 A I have no idea. The law doesn't allow for that. The
21 laws is written that they are either in the program or
22 they are out of the program. I am asked to evaluate
23 whether they could function in a less restrictive
24 environment. I have to look at whether, if they go out
25 into the community with no safeguards are they safe to be

1 at large. That is what the law asked me to evaluate.

2 MR. THOMAS: Your Honor, I beg the Court's
3 indulgence.

4 THE COURT: Okay.

5 Q Now, Doctor, in your report, page two, the last full
6 paragraph, it says right above previous sex offender
7 treatment.

8 A Okay.

9 Q It says three sentences up, three lines up, it says
10 on July the 21st of 2005 Mr. Owen was arrested in Florida
11 on two outstanding Delaware warrants. He was returned to
12 Delaware, the disposition of the matter is unclear from
13 available records.

14 A Correct.

15 Q Now, isn't it true that in 2005 Mr. Owen was in the
16 South Carolina Department of Corrections?

17 A I believe so but I am not specifically sure.

18 Q He was arrested in Florida in 2005 then could not
19 have happened?

20 A Let me look.

21 MR. BOGLE: Your Honor, this is kind of, we are
22 getting into res judicata issue right here. We have a
23 prior court order if I may, when this man committed and
24 that order reflects the convictions and the sentencing
25 dates in both Newberry County and Berkeley County and

1 Delaware and Charleston County. That has already
2 happened, it is there, those are matters already of record
3 so I would object to this line of questions going outside
4 the scope of what we are here for today. That being
5 whether or not his mental abnormality is so changed that
6 he is safe to be at large. I have a spare copy if Your
7 Honor would like to see it.

8 THE COURT: I have got the order.

9 MR. THOMAS: Your Honor, we are not saying that he
10 didn't have a problem in Delaware. It is just that her
11 conclusion that he is, should remain in the sexually
12 violent predator program is based upon certain conditions
13 and certain facts. One of those facts is that he was
14 arrested in Florida in 2005 which is not true. We believe
15 it would be relevant just for that purpose to show that
16 this is one of the factors that were considered in her
17 report that is not true.

18 THE COURT: Delaware, there are convictions.

19 MR. THOMAS: Your Honor, I beg the Court's indulgence
20 for a second.

21 Q Now, Doctor, in your report you also state that Mr.
22 Owen was charged with failure to register in Charleston
23 County?

24 A That is my understanding.

25 Q Do you know whether or not he was registered in

1 Berkeley County?

2 A I don't know.

3 Q No further questions.

4 THE COURT: Mr. Bogle?

5 MR. BOGLE: Nothing further.

6 THE COURT: You may step down. Are you going to call
7 any more witnesses?

8 MR. BOGLE: No, sir.

9 THE COURT: We will take a break.

10 (Whereupon, a short break was taken.)

11 THE COURT: All right, Mr. Bogle.

12 MR. BOGLE: Thank you, Your Honor, may it please the
13 Court. We have no further expert witnesses. When I spoke
14 to Ms. Foster prior to the hearing she asked if she would
15 be able to address the Judge. I cautioned her that this
16 was a medical issue and I didn't know if you wanted to
17 hear from her or not but I am calling any more witnesses
18 but I just wanted to let you know that she conveyed to me
19 she would like to address you or not. I told her it would
20 really be up to you if you would like to hear from her to
21 tell you what her situation is and what ~~her~~'s situation
22 is but I cautioned her this was a medical issue.

23 THE COURT: I think that the expert testimony that
24 has been received here in the hearing today has been ample
25 for me to make a decision. I can only imagine the

1 comments and would be troubling to them. They are doing
2 well but I understand it is not an easy situation.

3 MR. BOGLE: Thank you, Your Honor, just she has
4 conveyed to me a lot of good progress that her son has
5 made.

6 THE COURT: That is good. I am glad to hear that.
7 All right.

8 MR. BOGLE: So we have no further evidence and we
9 would finish our case now, we are done.

10 THE COURT: Mr. Thomas, anything else from you?

11 MR. THOMAS: No, Your Honor.

12 THE COURT: All right. Do y'all want to summarize
13 anything?

14 MR. THOMAS: I will be glad to, Your Honor, if I may.
15 Your Honor, if it please the Court. What we would propose
16 is that there is testimony that is sufficient to provide
17 probable cause that would allow this case to go forward to
18 a jury trial. That Mr. Owen could be safely within the
19 parameter of the statute and to be treated on an
20 outpatient basis. That the program, that he could be
21 involved in with Dr. Burke would be ten times more I guess
22 in depth than the program that he is currently being
23 provided through the Department of Mental Health where he
24 is receiving at most two hours of treatment a week. That
25 under these circumstances my client is willing to consent

1 to any condition in regards to GPS monitoring, to any of
2 the conditions that would be imposed through Dr. Burke's
3 program. In addition, Burke's testimony is that he can be
4 released from the Department of Mental Health and would
5 like to have some sort of safeguard. I believe that that
6 safeguard can be provided through the mental health
7 statute, Your Honor. And the Court can order that he
8 receive outpatient treatment pursuant to the statute and
9 that if he is not, doesn't comply with that treatment then
10 a report can be given to the Court and the Court could
11 have another hearing. And under the lack sufficient
12 insight of, to make responsible decisions actually
13 committed to the South Carolina Department of Mental
14 Health for inpatient treatment. I tried to find, Your
15 Honor, any type of case law in regards to such a
16 provision. The only thing that I did find and I actually
17 found this today which I can hand up is Leo McClam versus
18 the State of South Carolina. Some of these issues were
19 raised. The Court of Appeals made a decision that the
20 issue was mute but I think that it is interesting in this
21 case that the situation where an individual was in just
22 care, he was in the sexually violent predator program,
23 there is a distinction in that mental health had at some
24 point concluded that he was safe to be released. But in
25 the interim they actually, the Department of Mental Health

1 actually went to the Probate Court in Darlington County
2 and had an order committing Mr. McClam to a State Mental
3 Health facility for inpatient care and treatment. What we
4 are asking is basically what the State has done in this
5 case would be that Mr. Owen be released from the program
6 to participate in Dr. Burke's outpatient program, that he
7 be court ordered to attend and that if such and he
8 violates that order he could be brought back and committed
9 for inpatient treatment through the mental health code,
10 Your Honor. Your Honor, we believe that we have met our
11 burden in probable cause for this case to be allowed to go
12 to a jury for trial. Thank you.

13 THE COURT: Mr. Bogle.

14 MR. BOGLE: May it please the Court. I would like
15 to, if I may approach, Your Honor. I want to hand up the
16 primary case on annual review cases. The Billy Ray Tucker
17 case. A Judge in our Supreme Court filed March 24th of
18 2003. On page four of that case or page three of that
19 case they note that the expert in that case was Dr. Thomas
20 Martin. He testified that, right here, that Mr. Tucker
21 would be good for outpatient treatment. But also Dr.
22 Martin did not conclude in the language of the statute
23 that Tucker's mental abnormality is so changed he is safe
24 to be at large. In the case before you today both Dr.
25 Gehle and Dr. Burke testified that the mental abnormality

1 has not so changed that he is safe to be at large. That
2 is the sole burden upon the respondent at a probable cause
3 hearing under section 44-48-110. It is in the statute and
4 it is also set forth on page three of the opinion that you
5 are looking at right now, the Tucker opinion. So we
6 haven't had any evidence from either expert that the
7 mental abnormality, pedophilia is so changed that Mr. Owen
8 is safe to be at large. They want to put him in a program
9 that they have no keys to enforce him. He is not on
10 probation. Jessie's law doesn't apply so two years of
11 community supervision doesn't apply. The best thing to
12 hope for is to go to the Probate Court and try to have him
13 committed in the Probate Court if he is a danger to others
14 or a danger to himself or lacks insight to understand what
15 he is doing. Well in the McClam case two things happened.
16 The Department of Mental Health without us knowing about
17 it petitioned the Probate Court in Darlington County to
18 have McClam committed. The primary reason was
19 institutionalize somewhere most of his life. So on the
20 one hand of doing that is saying he is dangerous to
21 himself or others. At the same time the department
22 authorized the plan to petition for release. On the other
23 hand they were saying he was safe to be at large. You
24 can't have both. Created a problem, the matter got
25 resolved before they decided the issue was mute. Again

1 both doctors have testified that the mental abnormality
2 has not changed to make it safe to be at large. So we
3 would submit that based upon the testimony alone the
4 burden is not met under section 44-48-110. I will be
5 happy to answer any questions Your honor may have but that
6 is basically how we see the case.

7 THE COURT: All right. I will read these cases, I
8 have heard the testimony and I will read the cases and let
9 y'all know my decision. I am going to try to get all of
10 this stuff done before the weekend.

11 MR. BOGLE: Thank you, Your Honor.

12 MR. THOMAS: Thank you.

13 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

In the Matter of the Care and Treatment of Ronald Owen

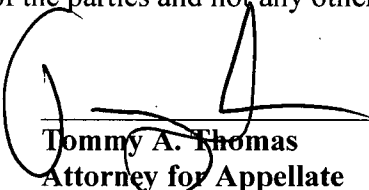
Appellate Case No.: 2013-000217

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Honorable Frank R. Addy, Jr., Circuit Court Judge
Trial Court Case No.: 2009CP3600319

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal complies with Rule 210(c), SCACR and with the South Carolina Supreme Court's order dated August 13, 2007, and contains all material proposed to be included by any of the parties and not any other material.



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