

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dillon County
Honorable Paul M. Burch, Circuit Court Judge

RECEIVED
AUG 28 2018
SC Court of Appeals

IN THE MATTER OF THE CARE AND
TREATMENT OF JOSHUA FLOWERS,

APPELLANT

APPELLATE CASE NO. 2017-002408

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

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

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

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

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT (NOVEMBER 6-7, 2017).....	1
VOIR DIRE	5
JURY SELECTION.....	23
PRETRIAL MOTIONS	25
OPENING STATEMENT BY MR. BOGLE	36
OPENING STATEMENT BY MR. FALK	41
TESTIMONY	
HATTIE GORDON	44
AMY SWAN	51
MOTION FOR A DIRECTED VERDICT	129
TESTIMONY	
JOSHUA FLOWERS.....	131
RENEWAL OF MOTIONS.....	147
CLOSING ARGUMENT BY MR. BOGLE	147
CLOSING ARGUMENT BY MR. FALK	154
CHARGE ON THE LAW	164
VERDICT	179
CERTIFICATE OF COUNSEL	184

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF DILLON) 2016-CP-17-00192

In the Matter of the Care and) Transcript of Record
 Treatment of Joshua Flowers,)

) November 6-7, 2017

)
 Respondent,)
)

B E F O R E:

Honorable Paul M. Burch
 Dillon County Courthouse
 Dillon, South Carolina

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

James G. Bogle, Jr., Esquire
 Attorney for State

James K. Falk, Esquire
 Attorney for Respondent

Grace L. Hurley, CVR-CM-M
 Circuit Court Reporter

Matter of Joshua Flowers

2

1 I N D E X

2 (November 6, 2017.)

3 Voir Dire. 5

4 Jury Selection. 23

5 Motions. 25

6 Opening Instructions by Court 31

7 Opening Statement by State. 36

8 Opening Statement by Respondent. 41

9 Hattie Gordon

10 Direct by State. 44

11 Cross by Respondent. 49

12 Redirect by State. 50

13 Amy Swan

14 Direct by State. 51

15 (November 7, 2017.)

16 Cross by Respondent. 99

17 Redirect by State. 121

18 Recross by Respondent. 126

19 Redirect by State. 128

20 Motions. 129

21 Joshua Flowers

22 Direct by Respondent 131

23 Cross by State. 142

24 Motions 147

25 Closing Argument by State 147

Matter of Joshua Flowers

3

1	Closing Argument by Respondent.	154
2	Charge.	164
3	Verdict	179
4	Certificate	183

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Matter of Joshua Flowers

4

1

EXHIBITS

2

ID

EVD

3

S-1 Sentencing Sheets

63

4

S-2 Bill of Information

143

5

C-1 Proposed Voir Dire

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Voir Dire

5

1 (On the record, November 6, 2017.)

2 THE COURT: Ladies and gentlemen of the jury, we are
3 going to need a -- to seat a jury on the following case. I'll
4 read the caption to you. It's the State of South Carolina,
5 County of Dillon, in the Matter of the Care and Treatment of
6 Joshua Flowers, Respondent. It's case number 2016-CP-17-192.
7 With that caption stated to you, the first question that I
8 have, is anybody on the panel related by blood or by marriage
9 or have any business, social, religious or fraternal
10 relationship with the Respondent, Joshua Flowers. Mr.
11 Flowers, I'm going to ask you to stand where the jury can see
12 you, please.

13 (Complies with request.)

14 THE COURT: Thank you, sir. You may be seated. Once
15 again, anybody on the jury panel who is related by blood or by
16 marriage or have any business, social, religious or fraternal
17 relationship with Mr. Joshua Flowers. If so, we need you to
18 stand at this time.

19 (No response.)

20 THE COURT: Potential witnesses in this case, Dr. Amy C.
21 Swan. I'm going to ask her to stand.

22 (Complies with request.)

23 THE COURT: Also, Ms. Hattie Gordon. The same question,
24 do I have anybody on the panel who is related by blood or by
25 marriage or have any business, social, religious or fraternal

Voir Dire

6

1 relationship with these two potential witnesses? If so,
2 please stand at this time.

3 (No response.)

4 THE COURT: Does any member of the panel have any
5 personal knowledge about the sexual offenses that the
6 Respondent, Joshua Flowers, was convicted of?

7 (No response.)

8 THE COURT: Would the fact that Joshua Flowers has been
9 convicted of sexual offenses and has completed his criminal
10 sentence related to that conviction in any way prevent you
11 from being able to be a fair and impartial juror in the trial
12 of this case?

13 (No response.)

14 THE COURT: Has any member of the panel or any of your
15 close personal friends or relatives ever been the victim of a
16 sexual assault?

17 (No response.)

18 THE COURT: Has any member of the jury or any of your
19 close personal friends or relatives been charged with or
20 convicted of a sexual offense?

21 (No response.)

22 THE COURT: Does any member of the jury panel have any
23 training or experience in the fields of psychiatry, psychology
24 or the law?

25 (No response.)

Voir Dire

7

1 THE COURT: Has any member of the jury panel currently or
2 formerly worked in the fields of psychiatry, psychology or the
3 law?

4 Your number, please, and how does that question apply?

5 JUROR NUMBER 100: 100.

6 THE COURT: How does that question apply?

7 JUROR NUMBER 100: Like I said earlier, previously worked
8 several months ago in law enforcement.

9 THE COURT: Thank you, sir. Anyone else?

10 (No response.)

11 THE COURT: The two attorneys we have here are Mr. James
12 K. Falk of the Falk Law Firm, LLC, and Mr. James G. Bogle with
13 the South Carolina Office of the Attorney General. My -- what
14 -- next question concerns representation. Anybody on the
15 panel presently represented or represented in the past by the
16 Falk Law Firm, Mr. James K. Falk, or James G. Bogle, Jr., or
17 the Office of Attorney General? If so, we need you to stand.

18 (No response.)

19 THE COURT: Has any member of the panel been involved in
20 any prison ministry, prison outreach program or other program
21 involving contact with incarcerated persons?

22 (No response.)

23 THE COURT: Has any member of the panel or any close
24 personal friends or relatives ever been subject to civil
25 commitment proceedings or been voluntarily or involuntarily

Voir Dire

8

1 civilly committed?

2 (No response.)

3 THE COURT: Anybody on the panel who is related by blood
4 or by marriage to any other member of the jury panel?

5 JUROR: Could you repeat that?

6 THE COURT: Any juror related by blood or by marriage to
7 any other juror?

8 JUROR NUMBER TWO: We're husband and wife.

9 THE COURT: And your numbers, please?

10 JUROR NUMBER TWO: Number Two.

11 JUROR NUMBER ONE: Number One.

12 THE COURT: Thank you. I would ask you who the boss is
13 but I won't do that because I know the answer I would have to
14 give.

15 Anybody on the panel ever been the victim of a violent
16 crime or have a family member or close friends the victim of a
17 violent crime?

18 (No response.)

19 THE COURT: Any member of the panel or close family
20 member or friend been the victim of a sexual assault?

21 (No response.)

22 THE COURT: Any member of the panel been a victim or have
23 a close family member that was the victim of domestic
24 violence?

25 (No response.)

Voir Dire

9

1 THE COURT: Has any member of the jury been the victim or
2 had a close family member that was sexually assaulted by their
3 husband, boyfriend, social acquaintance or been the victim of
4 a date rape?

5 (No response.)

6 THE COURT: Does any member of the panel believe that
7 homosexuality is a sin or is unnatural?

8 (Some jurors stand.)

9 THE COURT: All right. Thank you. You may be seated.
10 Does any member of the panel believe that the State of
11 South Carolina should pass a law making same sexual marriage,
12 excuse me, same sex marriages illegal?

13 JUROR: Could you repeat that, please?

14 THE COURT: Does any member of the panel believe that the
15 State of South Carolina should pass a law making same sex
16 marriages illegal?

17 (Some jurors stand.)

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

19 Anybody on the panel been the subject or had a close
20 friend or family member that was the subject of a mental
21 inquest warrant or other civil commitment for mental health
22 reasons? Sort of an expansion of a previous question.

23 (No response.)

24 THE COURT: Anybody on the panel ever worked for or
25 presently working with a social service agency, a guardian ad

Voir Dire

10

1 litem program, a foster care program or any other entity,
2 either private or governmental, that investigates or counsels
3 victims of rape or sexual assault?

4 (No response.)

5 THE COURT: Anybody on the panel have a close friend or a
6 family member or you have worked presently or in the past with
7 the Fourth Circuit Solicitor's Office in Dillon County?

8 (No response.)

9 THE COURT: Do I have any member of the panel or have a
10 spouse who works for any county, state or federal correctional
11 facility?

12 (No response.)

13 THE COURT: Do I have any EMTs, volunteer fire persons or
14 work for any occupation that can be described as a first
15 responder? Yes.

16 JUROR NUMBER 31: I am, I am first responder at our
17 school.

18 THE COURT: And your number?

19 JUROR NUMBER 31: 31.

20 THE COURT: Any member of the panel hold a degree in
21 psychiatry or psychology?

22 (No response.)

23 THE COURT: Any member of the panel or any family member
24 associated with any crime prevention group or victims' right
25 group or any criminal or law enforcement organization such as

Voir Dire

11.

1 a neighborhood watch, Citizens Against Violent Crime, People
2 Against Rape, rape crisis hotline, Darkness to Light or
3 anything of that nature?

4 (No response.)

5 THE COURT: Has anybody on the panel had any recent
6 communication with anybody with the Dillon County Solicitor's
7 Office?

8 (No response.)

9 THE COURT: Anybody had any recent communication with any
10 member of the South Carolina Attorney General's Office?

11 (No response.)

12 THE COURT: Does anybody on the panel have any reason
13 whatsoever or have any strong beliefs or reasoning about
14 sexual abuse of any kind that would affect you being a fair
15 and impartial juror if seated on this case?

16 (No response.)

17 THE COURT: Does anybody know of any reason whatsoever
18 why you could not be a fair and impartial juror if seated on
19 this case, please stand, but do not say anything till I ask
20 you. Yes.

21 JUROR NUMBER 33: I'd like to approach.

22 THE COURT: All right. If you'll come forward, please.

23 (Whereupon, an on-the-record bench conference is held
24 with counsel for the State and counsel for the Respondent with
25 Juror Number 33 in the presence, but of the hearing, of the

Voir Dire

12

1 jury panel.)

2 THE COURT: She's got to hear everything you say. Your
3 number is?

4 JUROR NUMBER 33: 33.

5 THE COURT: 33.

6 JUROR NUMBER 33: I'm a victim of a rape. I didn't want
7 to say it out loud.

8 THE COURT: Okay. If you were to be seated on this case
9 could you be both fair and impartial to all the parties
10 involved?

11 JUROR NUMBER 33: I don't think so.

12 THE COURT: Okay. Thank you. If you'd just keep that to
13 yourself.

14 REPORTER: She was 33; right?

15 THE COURT: 33.

16 JUROR NUMBER 33: 33.

17 MR. FALK: 33.

18 THE COURT: So she's out.

19 (Whereupon, the following takes place in open court.)

20 THE COURT: All right. If you or anyone in your
21 immediate family has ever been charged, accused or convicted
22 of a crime involving any kind of sexual abuse or you or
23 anybody in your immediate family ever been charged, accused or
24 convicted of a criminal sexual conduct or you or anyone in
25 your immediate family ever been the victim of criminal sexual

Voir Dire

13

1 conduct or sexual abuse whether reported or unreported?

2 (No response.)

3 THE COURT: Once again, does anybody know of any reason
4 whatsoever why you could not be a fair and impartial juror if
5 seated on this case, please stand at this time but don't make
6 any comment.

7 (No response. On-the-record bench conference takes place.)

8 THE COURT: There was a couple of questions or maybe more
9 than that, three or two --

10 MR. BOGLE: You asked two questions about homosexuality
11 and marriage.

12 THE COURT: -- Mr. Falk, Mr. Falk wants to put something
13 on the record about those questions.

14 MR. FALK: I asked that the Judge voir dire the jury and
15 ask specifically whether does anyone believe that someone who
16 suffers from pedophilia will never be cured, and I also asked
17 for this voir dire question, does any member of the jury panel
18 believe that it's impossible to rehabilitate persons that were
19 convicted of committing sexual crimes against children. Those
20 were questions eight and nine on the voir dire that I filed.
21 I believe that the questions are relevant in this case because
22 the diagnosis in this case is pedophilia, and I believe that
23 knowing that would help me better find jurors that would not
24 have preconceived prejudices about the disease of pedophilia,
25 and without knowing that, my client is unable to get a fair

Voir Dire

14

1 jury.

2 MR. BOGLE: In response, we feel the questions are
3 overbroad, those two are overbroad and, too, and lack of
4 specificity as to what exactly he's seeking. We agree that
5 they should not be asked.

6 THE COURT: And the Court's position on it, and I sustain
7 the State's objection to it as based on other questions more
8 general in nature about sexual abuse and sexual crimes would
9 have covered any, any aspect of there being a juror that could
10 not be fair and impartial. Okay.

11 MR. FALK: Could we go off the record for a minute?

12 OFF THE RECORD

13 (On the record. The following takes place in the
14 presence, but out of the hearing of the jury venire.)

15 THE COURT: I'm going to give you these questions for
16 court record, but I asked questions 11 and 12 concerning
17 homosexuality being a sin and also same sex marriages, and I
18 think we're all in agreement that at least 80 percent of the
19 panel stood on those two questions. So I'm going to ask an
20 additional question about fairness at the request of counsel
21 for the Respondent.

22 MR. BOGLE: Without objection from us.

23 (The following takes place in open court.)

24 THE COURT: Yes, sir.

25 JUROR: Can you answer a question for me?

Voir Dire

15

1 THE COURT: Come on up. Come on up.

2 (Whereupon, an on-the-record bench conference is held
3 with counsel for the State and counsel for the Respondent with
4 Juror Number 76 in the presence, but of the hearing, of the
5 jury panel.)

6 MR. BOGLE: Yes, sir.

7 JUROR NUMBER 76: Can you tell me --

8 THE COURT: 76.

9 JUROR NUMBER 76: -- without, without prejudice to this
10 case if this had anything to do with a child?

11 THE COURT: I'll have to defer to counsel. Any of these
12 prior convictions?

13 MR. BOGLE: Yes.

14 THE COURT: The answer's yes.

15 JUROR NUMBER 76: Then I'd rather not be part of it.

16 THE COURT: All right. 76.

17 JUROR NUMBER 76: I've had that happen before.

18 THE COURT: Okay. If you will just keep that to
19 yourself.

20 JUROR NUMBER 76: Okay.

21 THE COURT: Thank you.

22 JUROR NUMBER 76: Just go ahead and sit down?

23 THE COURT: 76, and the other one was 33; right?

24 MR. FALK: Yes.

25 THE COURT: 33 and 76.

Voir Dire

16

1 (The following takes place in open court.)

2 THE COURT: Ladies and gentlemen of the jury, got one
3 more question to ask you and it's concerning a couple of
4 questions I previously asked concerning homosexuality being a
5 sin or unnatural or your beliefs concerning same sex
6 marriages, even though some of you stood on that, now, I ask
7 you, if you were to be seated on this jury, and even though
8 you responded to those questions, if you were to be seated,
9 could you be both fair and impartial to both the State and the
10 Respondent? If you feel that you cannot be fair and
11 impartial, we need you to stand, but don't say anything until
12 I talk with you up here. Okay. I have one, two, three, four,
13 five, six, seven. Will the seven of you come right here and
14 just wait in line?

15 (Whereupon, an on-the-record bench conference is held
16 with counsel for the State and counsel for the Respondent with
17 Juror Number 58 in the presence, but of the hearing, of the
18 jury panel.)

19 THE COURT: We need your number.

20 JUROR NUMBER 58: 58.

21 MR. BOGLE: 58?

22 THE COURT: 58.

23 MR. BOGLE: Thank you.

24 THE COURT: You can respond, but not loudly.

25 JUROR NUMBER 58: I just don't feel like anything

Voir Dire

17

1 involving that I already have pretty strong opinions, and you
2 know, I don't know what's going, but I'm more than likely
3 already going to have my mind made up on a lot of situations
4 and decisions based on my personal beliefs. I don't feel like
5 I'm the best person to -- for both sides on any, any given
6 situation.

7 THE COURT: Okay. Okay.

8 JUROR NUMBER 58: So I've never been a part of this. So
9 I don't know what to expect, but I can't guarantee that I
10 don't already have opinions that may, you know.

11 THE COURT: Okay. Thank you. Just keep that to yourself.

12 JUROR NUMBER 58: Okay.

13 THE COURT: Don't leave though.

14 JUROR NUMBER 58: Okay. Keep that?

15 THE COURT: I'm going to keep that for right now.

16 (Whereupon, an on-the-record bench conference is held
17 with counsel for the State and counsel for the Respondent with
18 Juror Number 144 in the presence, but of the hearing, of the
19 jury panel.)

20 MR. BOGLE: What's your number?

21 JUROR NUMBER 144: 144.

22 THE COURT: 144. You can respond but not loudly.

23 JUROR NUMBER 144: What was he being charged with
24 exactly?

25 THE COURT: I'll have to defer to counsel. What were the

Voir Dire

18

1 charges?

2 MR. BOGLE: He was charged with criminal sexual conduct
3 with a minor. He was convicted of criminal sexual conduct,
4 the victim involved a seven or eight year old boy.

5 JUROR NUMBER 144: He's guilty.

6 THE COURT: Okay. If you were to be seated on the jury
7 --

8 JUROR NUMBER 144: I couldn't be fair to him. I'm sure.

9 THE COURT: Okay. Can I borrow your badge for just a
10 minute, but don't leave us, but don't say anything to
11 anybody.

12 (Whereupon, an on-the-record bench conference is held
13 with counsel for the State and counsel for the Respondent with
14 Juror Number 76 in the presence, but of the hearing, of the
15 jury panel.)

16 JUROR NUMBER 76: You asked us in the beginning to raise
17 our hand --

18 THE COURT: Yes, sir.

19 JUROR NUMBER 76: -- on the Bible. If I had to go by
20 that it states in that Bible homosexuality is a sin, and
21 that's the way I vote.

22 THE COURT: I understand.

23 JUROR NUMBER 76: Okay.

24 THE COURT: If I could have your badge and let me keep it
25 a few minutes, but if you would just keep that to yourself.

Voir Dire

19

1 JUROR NUMBER 76: You want me to just wait?

2 THE COURT: Yes, sir.

3 (Whereupon, an on-the-record bench conference is held
4 with counsel for the State and counsel for the Respondent with
5 Juror Number 150 in the presence, but of the hearing, of the
6 jury panel.)

7 JUROR NUMBER 150: I just -- I don't believe in -- 150 --
8 you know, same sex marriages, homosexuality I just I don't
9 believe in it. Anything to do with sexual cases, I don't know
10 about this, but I feel that I would probably vote be guilty
11 before I even got started. I just don't, something of that
12 type, I just don't feel I could be partial [sic].

13 THE COURT: Well, if you were to be seated on this jury
14 and hear the evidence from the witness stand, whatever is
15 presented, do you feel you could be fair and impartial?

16 JUROR NUMBER 150: I, I really don't to be honest. I, I
17 do not.

18 THE COURT: Okay. Let me borrow your badge.

19 JUROR NUMBER 150: Sure. I just want to be honest with
20 you about it.

21 THE COURT: If you'll stay with us.

22 JUROR NUMBER 150: Okay.

23 THE COURT: Just keep it to yourself.

24 JUROR NUMBER 150: Yes, sir.

25 (Whereupon, an on-the-record bench conference is held

Voir Dire

20

1 with counsel for the State and counsel for the Respondent with
2 Juror Number 45 in the presence, but of the hearing, of the
3 jury panel.)

4 THE COURT: Let me hold your, hold your badge.

5 JUROR NUMBER 45: 45.

6 THE COURT: 45.

7 JUROR NUMBER 45: I have a niece that's -- and we are
8 going through a family problem. Right now I am, you know, I
9 mean, I'm debating because she's my niece, my sister's child
10 so.

11 THE COURT: Well, I'll ask you this. If you were to be
12 seated on this jury could you be both fair and impartial to
13 the State and the Respondent?

14 JUROR NUMBER 45: Right now I'm debating between how I
15 feel them. It's been -- I'll just give you -- for me to
16 answer, no, probably couldn't.

17 THE COURT: Okay. I'm going to keep your badge for a few
18 minutes, but don't leave.

19 JUROR NUMBER 45: Okay.

20 MR. FALK: I didn't hear what she said.

21 THE COURT: She said she -- no, she couldn't be fair.

22 MR. BOGLE: I didn't get the details.

23 (Whereupon, an on-the-record bench conference is held
24 with counsel for the State and counsel for the Respondent with
25 Juror Number 33 in the presence, but of the hearing, of the

Voir Dire

21

1 jury panel.)

2 JUROR NUMBER 33: 33.

3 MR. BOGLE: Yes, ma'am.

4 THE COURT: We've already taken care. You're fine.

5 JUROR NUMBER 33: Okay.

6 THE COURT: Let me have your badge.

7 JUROR NUMBER 33: You want me to stay or just

8 --

9 THE COURT: Just stay with us.

10 (Whereupon, an on-the-record bench conference is held
11 with counsel for the State and counsel for the Respondent with
12 Juror Number 91 in the presence, but of the hearing, of the
13 jury panel.)

14 THE COURT: How are you? Let's see. They got it
15 backwards.

16 JUROR NUMBER 91: Juror Number 91.

17 THE COURT: 91.

18 MR. BOGLE: Thank you.

19 THE COURT: You can respond to that question.

20 JUROR NUMBER 91: Yes. I was born in a holiness family.
21 The Bible preaches that sin, that's the only part of the holy
22 family. The Bible preaches that's sin and you're going to
23 hell. The Bible doesn't appreciate man to man, woman to
24 woman. Got to do something like that you got to be sick doing
25 it. No. No. You're a sick person, a man with a man, a woman

1 with a woman. That's sickness. It's disgusting. I don't
2 believe in none of that.

3 THE COURT: Okay. All right. If you were to be seated
4 on this jury and listen to all the evidence and the testimony
5 presented, you feel you could be fair and impartial?

6 JUROR NUMBER 91: No. Because it's the devil, if he's
7 doing the devil's work. It need to be sin.

8 THE COURT: Thank you, sir. If I could borrow your
9 badge.

10 JUROR NUMBER 91: That's disgusting.

11 THE COURT: Stay with us for a while.

12 (Juror Number 91 returns to seat.)

13 THE COURT: Any discussion you all want to put on the
14 record about these folks? 91, 33, 45, 150, 76, 144 and 58 are
15 all out.

16 (The following takes place in open court.)

17 THE COURT: Bear with us a few minutes. We've got to get
18 a jury, a list prepared and then we've got to give the
19 attorneys some time.

20 All right. I have to give counsel a few minutes to
21 review these jury lists. We're going to take 15 minutes. I
22 need everybody back in their seats in 15 minutes. In case you
23 need to use the restroom the bailiff staff will let you know
24 where they are if you don't already know where they are
25 outside the door. Remember, don't discuss this case. None of

Jury Selection

23

1 you be discussing any case or anything else pending this week
2 on the docket. Just keep to yourselves, and we'll see you
3 back in here in 15 minutes. You're welcome to stay if you
4 want to stay seated. Otherwise, please be back.

5 (OFF THE RECORD.)

6 (On the record. The following takes place in the
7 presence of the jury panel.)

8 THE COURT: Madam Clerk.

9 THE CLERK: The State strikes number?

10 MR. BOGLE: The State would strike number two.

11 THE CLERK: Defendant?

12 MR. FALK: The Respondent would strike number four.

13 THE CLERK: The State?

14 MR. BOGLE: The State would strike number six.

15 THE CLERK: Defendant?

16 MR. FALK: Respondent strikes number 11.

17 THE CLERK: The State?

18 MR. BOGLE: The State would strike number 10.

19 THE CLERK: Excuse me. I didn't hear you.

20 MR. BOGLE: Ten.

21 THE CLERK: Thank you. Defendant?

22 THE COURT: Respondent.

23 MR. FALK: Strike number 17.

24 THE CLERK: The State?

25 MR. BOGLE: The State would strike number 20.

Jury Selection

24

1 THE CLERK: Defendant?

2 MR. FALK: 19.

3 THE CLERK: On the alternate, the State strikes?

4 MR. BOGLE: Number 21.

5 THE CLERK: Respondent?

6 MR. FALK: Strikes number 22.

7 THE CLERK: On the second alternate, the State strikes?

8 MR. BOGLE: Number 24.

9 THE CLERK: Respondent strikes number?

10 MR. FALK: 25.

11 THE CLERK: The State strikes number 2, number 6, number
12 10, number 20, and on the alternate, the first alternate
13 number 21, on the second alternate, number 24.

14 MR. BOGLE: That is correct.

15 THE CLERK: Respondent strikes number 4, number 11,
16 number 17, number 19, and on the alternate number -- first
17 alternate, number 22, and on the second alternate, number 25.

18 MR. FALK: That is correct.

19 THE CLERK: Thank you, sir.

20 When I call your name if you would just bring all your
21 belongings and come sit to my right up in the jury box.

22 Clifton B. Williams, Aleasha M. McGill, Monique Mitchell,
23 Damien Sowell, Charles Bridgers, Willie Albert Jennings,
24 Michael Bethea, Sanasia McNeil, Sheila Green, James Murphy,
25 Bryan Grice, Quanteonia Willis. Our alternate number one is

Motions

25

1 Jermaine Heyward, and our alternate number two is Robert
2 Johnson. You go -- you can sit up there in, right there.
3 Okay. Thank you.

4 THE COURT: Any matters concerning jury selection?

5 MR. BOGLE: None from the State, Your Honor.

6 MR. FALK: None from the Respondent.

7 THE COURT: All right. Ladies and gentlemen of the jury,
8 please don't discuss this case. What I'm going to do is ask
9 you all to step back to the jury room and relax a few minutes.
10 I need for the first 12 to -- need you all to meet each other.
11 The alternates can go back, but out the first 12, if you will
12 name a foreperson, we'll have you back in here in a few
13 minutes. Okay. If you all will go back and relax a few
14 minutes I'll take care of your colleagues that are on the
15 panel.

16 (Whereupon, the following takes place outside the
17 presence of the jury. Remaining panel excused by the Court.)

18 THE COURT: Any matters before we swear the jury?

19 MR. BOGLE: There are a couple of motions in limine, Your
20 Honor. The State's second motion in limine regarding
21 treatment, I'm going to withdraw that and see how the
22 testimony goes. I may object at certain times, but not make a
23 formal motion on it.

24 The State's first motion in limine has to do with the
25 location he's going to. As Your Honor knows, the State has to

1 prove whether or not he has been convicted of a sexually
2 violent crime and does he have a mental abnormality that he
3 cannot control that makes him likely to reoffend in the same
4 manner and should be confined for long-term control, care and
5 treatment. Any reference to the location where he might go,
6 which is two unused wings at the Department of Corrections
7 behind the wire at Broad River, one of them is the Edisto wing
8 of the former death row many years ago. Any reference to the
9 location being in prison or a life sentence or behind the wire
10 would not be -- would be irrelevant. It might prejudice the
11 jury. It might distract them from what we have to prove. We
12 would ask that counsel not be allowed to describe the location
13 in such, such terms. No question he's going to a secure place
14 for long-term control, care and treatment that's run by the
15 Department of Mental Health. The actual location is run by
16 the department. They are sealed off from the rest of the
17 prison where these inmates do time for crimes. The only
18 connection they have with the prison system is getting him
19 food and sometimes medical care. Well, I think even most of
20 that is taken care of by the Department of Mental Health.

21 THE COURT: Mr. Falk.

22 MR. FALK: Your Honor, I think I should be allowed if I
23 choose to go down this path some latitude as to what the
24 secure facility is. Obviously I'm not going to say it's the
25 old death row, but I think that the jury is entitled to know

Motions

27

1 that what we are talking about is a commitment for an
2 indeterminate period of time in a place where he is not free
3 to come and go.

4 THE COURT: You're okay?

5 MR. BOGLE: We're okay with that.

6 THE COURT: If you handle it like you normally do, yeah.

7 MR. BOGLE: The only other thing, Your Honor, and this is
8 kind of awkward for me, but let me just throw this out. At
9 the last trial -- all right. The way this case is set up
10 right now, the court appointed an expert, Dr. Swan, sometime
11 ago to evaluate the guy, the -- Mr. Flowers, and she's done
12 her job. Under the law the Respondent is entitled to a second
13 opinion and our information is that he sent Mr. Flowers to see
14 a second expert that could not help him and that expert will
15 not be testifying.

16 Now, at the last trial we did last week, during closing
17 arguments Mr. Falk referred to -- I think what he was doing
18 was explaining to the jury how they don't necessarily have to
19 be believed, the only doctor who's here, Dr. Swan. As Your
20 Honor knows, you will tell them that the expert witness is to
21 guide them, not to control them, and they're free to believe
22 all or part of her testimony, but what Mr. Falk said was -- he
23 made a reference to a recent personal situation with him
24 where he had seen a doctor, gone through some tests and the
25 doctor said, "Well, you think you might -- you need some

1 surgery," and Mr. Falk commented to the jury that he had the
2 luxury of getting a second opinion in that situation. Well,
3 the courts have ruled that we can't go into the fact that Mr.
4 Flowers got a second opinion, could not help him, but if that
5 kind of comment is going to come out in closing argument I
6 think that opens the door. So that's kind of where we are.

7 MR. FALK: Your Honor, I don't think it opens the door.
8 I mean, looking at the Gonzalez case, it wasn't necessarily
9 decided on a idea of, of missing witness kind of theory. It
10 would be speculative to assume what my expert witness could
11 have said. There's no reason to believe that my expert
12 witness would have necessarily agreed with Dr. Swan, and I
13 think that the Gonzalez court which is the one, I believe, Mr.
14 Bogle is referring to, I think they made reference to the fact
15 that in that -- in this area you can have doctors that may
16 agree or may disagree -- let me back that up. For example,
17 in, in a prior case my expert has said, "Well, I don't agree
18 with Dr. Swan's analysis. I don't agree with some of her
19 opinions, but I can't necessarily say he's ready for, for
20 release," sort of sometimes doctors come in a gray area. I
21 don't think it's relevant, and I think it would be prejudicial
22 if I have to then prove or discuss an expert witness that I
23 may or may not have called, and I do not think that -- I don't
24 think this is a question of opening the door as it might be in
25 some other kind of analysis. I believe the Court in Gonzalez

Motions

29

1 said that, you know, when you're dealing with expert witnesses
2 there's just too much speculation as to what my expert would
3 have said, and if he is allowed to talk about that, he's --
4 the jury's able to draw the conclusion that my expert would
5 have agreed completely with Dr. Swan, and that's not what my
6 expert said, and that's, you know, if I have to I'll ask for a
7 continuance, I'll get my expert up here. I mean, he had
8 strong disagreement with Dr. Swan, but still wasn't going to
9 necessarily be a strong witness on my client's behalf.

10 THE COURT: All right. Well, I'm, I'm confused. You
11 weren't going to get into that; were you?

12 MR. BOGLE: Well, it's kind of I'm asking if he's going
13 to open the door after the record's already closed is what I'm
14 doing because if he makes that kind of closing argument again
15 it kind of retroactively opens the door for me to get into the
16 expert issue because, because of the fact that in his personal
17 situation he had the luxury of getting a second opinion.
18 Well, they got a second opinion here, and for whatever reason
19 Dr. Mulbry is not here.

20 THE COURT: Okay.

21 MR. FALK: I mean, I may have been inartful in my closing
22 argument but my point was that I could call a doctor on the
23 phone and I could say, "I've got this kind of reading on this
24 test," and that doctor says, "Yeah. I agree." My, my second
25 opinion was the fact that medical doctors their, their

1 opinions are based on quantitative values that are easy for
2 somebody else to check, whereas her opinion is much -- very
3 much a qualitative opinion that I can't call another doctor
4 on the phone. It's not as easy to compare. I mean, that's
5 what I was trying -- that's the point I was trying to
6 make.

7 THE COURT: Well, if you're giving me assurance that you
8 won't copycat what you did last week as far as whatever was
9 said, I don't remember, but you'll clean that up and
10 everything'll be fine.

11 MR. FALK: Okay.

12 MR. BOGLE: Thank you, Your Honor. There's nothing else
13 that I can think of to do before we swear them.

14 THE COURT: Mr. Falk, anything else?

15 MR. FALK: Your Honor, I didn't prepare a written motion
16 on this, but it's similar to my motion the last time. I would
17 prefer if Dr. Swan did not use the word child or children when
18 she's referring to the victims in this case, that she use more
19 clinically and precise terms of preadolescent and adolescent.

20 THE COURT: And she did that. Didn't she?

21 MR. FALK: Yes. She did.

22 THE COURT: Dr. Swan, if you'll follow that same pattern.

23 MR. BOGLE: At the same, the same time I think she's,
24 she's going to be allowed to say that it was a seven and a
25 half year old boy, age --

Opening Instructions by Court

31

1 THE COURT: Right. I understand.

2 MR. BOGLE: -- because they go to the elements of the
3 the diagnosis.

4 MR. FALK: Don't like seven and a half year old child.

5 THE COURT: All right. See who they got.

6 (The following takes place in the presence of the jury.)

7 THE COURT: All right. If I could get you all on the
8 back row to just move over one more. Now, to my alternates,
9 would you all be more comfortable if one of you takes the
10 chair up here and we move you here or are you comfortable out
11 front?

12 JUROR: I'd rather be back there.

13 THE COURT: Okay. You all do that. Just -- yeah, bring
14 that chair with you and you can just slide right in front of
15 that column and that way you'll be able to see and hear
16 better.

17 JUROR: All right.

18 THE COURT: And your name, sir?

19 MR. BRIDGERS: Charles Bridgers.

20 THE COURT: Mr. Bridgers?

21 MR. BRIDGERS: Yes, sir.

22 THE COURT: Will be the foreperson of the jury. Madam
23 Clerk, if you will put them under oath.

24 (Jury sworn by the clerk.)

25 THE COURT: Mr. Foreman, ladies and gentlemen of the

Opening Instructions by Court

32

1 jury, I just have a few brief opening remarks to make to you
2 to let you know how we're going to proceed. Then I'll turn
3 the trial over to the attorneys for the presentation.
4 Basically what I'm going to do is outline the phases of the
5 case for you. Okay?

6 First of all, both sides will make brief opening
7 statements to you to outline their position in the case.
8 After that will come the evidentiary portion of the trial
9 where you will receive the evidence. The evidence may take
10 different forms. It may be testimony from this witness stand.
11 It could be previously recorded testimony. It could be
12 documents. It could be photographs. It could be physical
13 type items. It is critical that you observe and listen to the
14 evidence because you will be the finders of the facts in this
15 case. I do not become involved in the facts. In South
16 Carolina the trial judge remains neutral. We sit as a neutral
17 referee. We are not allowed to have an opinion about the
18 facts in the case. In South Carolina the jury is the sole and
19 exclusive judge of the facts. I am the judge of the law.
20 From time to time during the trial I may have to decide an
21 issue of law that might be raised. Quite often that will
22 require me to ask you to step back to the jury room while I
23 resolve that.

24 Now, the end result of any trial is to reach a verdict.
25 To reach a verdict can be simply be said that you the jury

Opening Instructions by Court

33

1 find the facts as you may do so and apply those facts to the
2 law that the Court will provide to you during the judge's the
3 charge of the law, and thus, reach a fair and just verdict.

4 After the evidentiary portion of the case will come the
5 time for both sides to make closing arguments to you. That's
6 where counsel will be allowed to make closing arguments to try
7 to get you to see the evidence as they see it to try to
8 persuade you to follow their line of thought about the facts
9 and the evidence and also the application to the law.

10 After the closing arguments will come the time for me to
11 give you the law of the State of South Carolina concerning the
12 case. Only after all those phases are completed will you be
13 asked to deliberate this case. So, please, with that said, do
14 not discuss this case amongst yourselves. In other words,
15 don't deliberate this case until you are asked to at the
16 conclusion.

17 During any breaks that we have do not discuss the case
18 amongst yourselves and do not allow anybody to approach you in
19 any form or fashion and discuss this case with you. That
20 would be highly improper, and you would need to contact a
21 court official, or if it's after hours, you would need to
22 contact the sheriff's department of any such contact. Do not
23 even discuss this case with your family members. Do not do
24 any independent research on this case. The proper way to
25 decide the case is to listen and observe the evidence that's

Opening Instructions by Court

34

1 presented and apply that to the law, not on something that
2 you've done independent research. It would be highly improper
3 for you to do that.

4 All right. As far as your cell phones, if you have them,
5 keep them on silent during the progress of the trial, and
6 later on you are in deliberation stage and you need to make a
7 call, Mr. Foreman, it would be your duty as presiding officer
8 over the trial to cease any deliberations, to allow anybody to
9 make an emergency call or if you need to take a break, and
10 I'll talk with you further about that. Now, you know, this
11 case is on the civil docket, but there's a burden of proof
12 that has to be met here, and it's beyond a reasonable doubt,
13 and I'll give you a full charge on that when the time comes,
14 but you'll hear the attorneys probably mention that to you.
15 So the burden of proof is on the State of South Carolina to
16 prove their case beyond a reasonable doubt.

17 Whenever you are asked to reach a verdict, it will need
18 to be a unanimous verdict, all 12 deliberating jurors will
19 need to be in agreement.

20 Note-taking, some judges don't want you taking notes.
21 I'll allow notes if you want to do that, but the cardinal rule
22 about note-taking is you've got to keep them to yourself. You
23 can't be sharing them with other jurors. Personally, in
24 reflecting back on my college days, I would not keep notes. I
25 can remember professors espousing their knowledge to us and

Opening Instructions by Court

35

1 putting things on the board, you know, going through their
2 lecture, and if you tried to keep notes, or at least if I
3 tried to keep notes, I'd be trying to make a note and I would
4 miss something else he said while I'm trying to tend to the
5 note. So some people can listen to three or four things at
6 one time and keep track with all of it, but I wasn't too good
7 at that, but personally, I wouldn't keep notes, but you're
8 more than welcome to if you want to.

9 We will not -- hopefully, we will not work real late, try
10 to keep business hours. Over the years things have changed.
11 The Chief Justice several years ago did not want us working
12 past five unless we had to and, you know, not past 5:30 unless
13 it was a good, sound reason for doing so because you've got
14 court staff, you've got jurors that have needs, home, family,
15 family needs that need to be tended to. So we won't be
16 working late.

17 If you need a break, let us know. We'll take a brief
18 recess. We'll try do that every hour or so. Please do not
19 fall asleep on me. That can cause problems. If you feel like
20 you're going to doze off, let one of us know and we'll try to
21 get some coffee or some kind of caffeine, Coca-Cola, whatever.
22 Okay? So just raise your hand, let us know or let Mr. Foreman
23 know and we'll try to address that.

24 We want you to relax, listen carefully. Any problems,
25 we're here to try to resolve them for you, and I'll ask that

Opening Statement by State

36

1 you give your undivided attention to the attorneys for their
2 presentation.

3 Mr. Attorney General.

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

6 Ladies and gentlemen, I introduced myself earlier or the
7 Judge introduced me earlier. My name is Jim Bogle, and I'm
8 with the Attorney General's Office in Columbia. People
9 sometimes see us on these cases, and they wonder why it's not
10 their solicitor or their county attorney or somebody local
11 doing them, and the reason is when the legislature passed this
12 law back in 1998 they gave the job to our office to present
13 this case in courts around the state. One of the circuits I
14 have is the Fourth Circuit. So I present these cases in
15 Dillon, Darlington, Bennettsville, that's where I am; and
16 where I'm happy to be back here today. It's been a while
17 since I've been in Dillon. The last time was a criminal case
18 many years ago involving a burglary charge. That's, that's
19 what happened back then.

20 Now, here's what we have today. You need to understand
21 that this is not going to be the kind of jury duty you might
22 have told your family and friends about when you said you were
23 coming down here. I'm sure when you heard you were coming to
24 see a case involving the Court of Common Pleas or civil cases
25 you might have been thinking a medical malpractice case, auto

Opening Statement by State

37

1 wreck, contract case or something like that. That's not what
2 this is. This case is brought under South Carolina's sexually
3 violent predator law. What that law says certain people are
4 identified, and here's what the General Assembly said when
5 they wrote this law back in 1998. They said the General
6 Assembly finds that a mentally abnormal and extremely
7 dangerous group of sexually violent predators exist who
8 require involuntary civil commitment in a secure facility for
9 long-term control, care and treatment. The General Assembly
10 further finds that the likelihood these sexually violent
11 predators will engage in repeated acts of sexual violence if
12 not treated for their mental conditions is significant.

13 So here's what we have. Joshua Flowers, sitting behind
14 me with his attorney, has been convicted of what is classified
15 as a sexually violent crime in South Carolina. It's criminal
16 sexual conduct in the second degree. His victim was a small,
17 small young boy about seven and a half, eight years old,
18 happened here in South Carolina, and he pleaded guilty right
19 here in Dillon County. He served some prison time, and after
20 that prison time, his case was then reviewed, and it made it
21 to where we are right now.

22 Here's what we have to prove to you. The State has to
23 prove to you, number one, that Mr. Flowers was convicted of a
24 crime that's classified as sexually violent. The crime is
25 criminal sexual conduct in the second degree, and he was

Opening Statement by State

38

1 convicted of that here in Dillon County. So I don't think
2 there'll be a whole lot of dispute over the type of crime.

3 The next question is, and back a few months ago there was
4 a prior hearing on this case. The court-appointed doctor, Amy
5 Swan, sitting over there in the, in the teal jacket, her job
6 is to evaluate Mr. Flowers, to go over all the records we have
7 on him, prison records, police records, victim statements,
8 victim, witness statements, everything about the crimes he's
9 been convicted of, and we have the crime in South Carolina and
10 a similar crime in North Carolina. Her job is to look at all
11 that, then interview the guy, talk to him, get in front of
12 him, see what he, see what makes him tick, go over his life
13 story from when he was born till when he's sitting there in
14 front of her, and you'll find that that didn't go so well.
15 Mr. Flowers got upset about that and he walked out. He would
16 not cooperate with the evaluation. So that's something that
17 happens. Now, what Dr. Swan has got to do is the second thing
18 we have to prove to you is does Mr. Flowers have a mental
19 condition, what they call a mental abnormality, and is it such
20 a degree that he cannot control it, which makes him likely to
21 offend in the same way if he's released into the public, will
22 he commit future sexually violent crimes, and if he meets that
23 burden, and what we're trying to do is civilly commit him.
24 I'll be candid. We're trying to lock him up for treatment
25 because that's what it involves. If you find that he -- that

Opening Statement by State

39

1 we've met the burden, that he is, in fact, a sexually violent
2 predator as defined by the law, that he's got that conviction,
3 that he's got that mental abnormality, that he cannot control
4 it, then he'll be confined in a secure setting in Columbia run
5 by the Department of Mental Health for what they call long-
6 term control, care and treatment. So that's what we're here
7 for today. It's not a civil case like you expected to hear.
8 Also, because of this law and the peculiarities of it,
9 normally in a civil case one side has to prove to the other
10 their case, what they, what they -- by what they call
11 preponderance of the evidence. Think of a scale shifting just
12 slightly, 51 percent versus 49 percent. Not with this law. I
13 think because the General Assembly realized that we're taking
14 someone's liberty away, the burden on the State, according to
15 the law, is that we prove the case to you beyond a reasonable
16 doubt. In other words, if after hearing the evidence
17 presented by the witness for the State, the witnesses for the
18 State, if you're firmly convinced that this guy meets the
19 definition of a sexually violent predator then you return your
20 verdict for the State. That's your duty under the oath you
21 took. On the other hand, if you find that we have not proven
22 something, if one or both of the elements I've talked about we
23 didn't make it, then you're obligated to find a verdict for
24 Mr. Flowers. So that's the kind of case this is, and that's
25 what your job is.

Opening Statement by State

40

1 Now, because of the nature of the case, Dr. Swan's going
2 to be testifying about the diagnosis she came up with. She
3 diagnosed Mr. Flowers what they call pedophilic disorder, a
4 pedophile, which means he has a sexual attraction to
5 prepubescent, under puberty, young boys. That's the diagnosis
6 she came up with.

7 Normally, in a case in court, a witness can only testify
8 about facts, things they saw, things they smelled, things they
9 heard, "I saw the light turn red. I heard the gun go off. I
10 saw him grab the knife," things like that. They can't give
11 opinions, but in certain cases, and this is one, if a person
12 has the education and the qualifications and the expertise
13 about a certain type they can be qualified by the Judge as an
14 expert witness and be allowed to give an opinion. So Dr. Swan
15 will be testifying that her opinion is he meets these criteria
16 to be securely committed as a sexually violent predator. Now,
17 at the same time, she's a witness like anyone else. You as
18 the jurors are the ultimate finders of what the facts are.
19 You can believe all of what a witness says, none of what a
20 witness says or just a part. You make that call. I don't
21 make that call. Mr. Falk doesn't. The Judge doesn't. That
22 is solely your call, and you have to evaluate the testimony of
23 Dr. Swan, as well as the testimony of Ms. Hattie Gordon.
24 She'll also be testifying. She was the court reporter during
25 his guilty plea, and she has some relevant evidence to present

Opening Statement by Respondent

41

1 to you about that situation, but that's the State's case. I
2 thank you again for your service. Your Honor.

3 THE COURT: Thank you, sir. Mr. Falk.

4 MR. FALK: May it please the Court?

5 THE COURT: Yes, sir.

6 MR. FALK: Mr. Bogle, ladies and gentlemen of the jury,
7 I'm representing Mr. Flowers today. He is entitled to counsel
8 in this kind of case, just like he'd be entitled to counsel in
9 a criminal case, and I have a contract with the South Carolina
10 Commission for Indigent Defense to represent him in this case
11 right here. The reason why he has a right to counsel in this
12 case is because at the end of the day, depending on what your
13 decision is, your decision is going to make the difference
14 about whether or not he's going to go home or whether or not
15 he's going to go to a secure confined facility. So I mean,
16 your decision, although this is going to be a very quick
17 trial, your decision is going to have huge implications for my
18 client, and as Mr. Bogle said, you all are the finders of the
19 facts in this case, and in some places, in some countries,
20 they don't have -- they have other individuals separate from
21 the Judge where somebody decides what the law is and somebody
22 decides what the facts are, but in the United States the
23 people who decide the facts are everyday citizens, people on
24 the street. That's how, that's how our law works, and that's,
25 that's the best system in the world provided that when the

Opening Statement by Respondent

42

1 people who come and sit in your chairs they can leave the
2 prejudices that they bring with them aside and just make their
3 decision based on what they heard in this courtroom and not be
4 influenced by any type of prejudices that they may have about
5 one of the particular parties.

6 Now, this case is going to be difficult for you all to
7 sort of put your prejudices aside because there's no question
8 that my client has been convicted of committing crimes against
9 children, and a lot of people, it's certainly understandable,
10 have strong feelings about people who would commit crimes
11 against children, and some people will never forgive them for
12 that. Even though the court system will give him a sentence,
13 some people will never forgive them for that, and some people
14 could use this type of, this type of proceeding right now in
15 order to punish him further and that's not what your job is
16 today, and if you all decide that you want to punish him
17 further because you can't forgive him for the crimes that he
18 committed, then you will not be upholding the oath that you
19 gave in this case. So that's one prejudice that I know that
20 you're going to have, and another prejudice I know that you're
21 going to have because about 80 percent of the people when you
22 all were sitting over there stood up. Now, my client is a
23 homosexual. He's gay, and in fact, you'll probably hear some
24 testimony that he has gotten married to his partner. I know a
25 lot of people have some strong opinions about homosexuality

Opening Statement by Respondent

43

1 and two men living together as, as partners, and that it's
2 contrary to what we teach in the Bible. I mean, I understand
3 all that. I've got to put that aside when I'm representing my
4 client, and you have got to put that aside when you're
5 deciding on this case.

6 Now, the Judge asked you, you know, based on your
7 response when, when -- about 80 percent of you all stood up,
8 the Judge then asked again whether or not your opinions about
9 homosexuality and homosexual marriage would influence your
10 decision in this case, and you all were not in the 10 or 12
11 people who stood up in a line down here. So I'm relying on
12 you and my client are relying on you to follow up on that
13 oath, too, that you're not going to make, you're not going to
14 make your decision in this case based on your feelings about
15 homosexuals, homosexual marriage or you're not going to base
16 your decision in this about people who commit crimes against
17 children.

18 This is going to be a very quick trial really because I
19 expect the State's only going to call -- they're going to call
20 their expert and there may be another fact witness. I'll call
21 my witness. This case is going to go very quickly, and it's
22 kind of interesting because it's a, it's a very important case
23 as far as my client is concerned, but we'll probably be done
24 sometime tomorrow. So just because it's a short case, I want
25 you all still to appreciate the fact that this is a very

Hattie Gordon - Direct by State

44

1 serious, this is a very important case and it requires really
2 you all's best attention to the facts in this case, and I hope
3 that you all will give my client a fair evaluation, that
4 you'll give my client your attention to this case and that's
5 really all that we can ask. Thank you.

6 THE COURT: Thank you, Mr. Falk.

7 MR. BOGLE: Thank you, Your Honor. May it please the
8 Court?

9 THE COURT: Yes, sir.

10 MR. BOGLE: The State would call Ms. Hattie Gordon.

11 Whereupon, Hattie Gordon is called to the stand, duly
12 sworn by the clerk and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. BOGLE:

15 Q For the record would you please tell the jury who you
16 are? What's your name?

17 A My name is Hattie Gordon.

18 Q And Ms. Gordon, how are you employed at the present time?

19 A I'm employed by the South Carolina Judicial Department as
20 a court reporter.

21 Q And how long have you been employed as a court reporter
22 for the State Judiciary?

23 A Sixteen years.

24 Q So you kind of have the job like this lady right here is
25 doing; is that right?

Hattie Gordon - Direct by State

45

- 1 A Yes.
- 2 Q Okay. I'd like to show you what's been pre-marked as
- 3 State's Exhibit One. This is a sentencing sheet for the
- 4 Respondent, Joshua Flowers.
- 5 A Okay.
- 6 Q Okay. On this sheet of paper it shows he pleaded guilty
- 7 to a certain crime. At the very bottom it has the name
- 8 written of the person who the court reporter was.
- 9 A Uh-huh.
- 10 Q Could you look at that sentencing sheet and first off
- 11 tell me at the very bottom who was the court reporter that was
- 12 reporting the case when that guilty plea was taken?
- 13 A Hattie Gordon.
- 14 Q That's you?
- 15 A Yes.
- 16 Q Okay. And what's the date of the sentencing? When did
- 17 the judge sentence Mr. Flowers?
- 18 A April 23rd, 2010.
- 19 Q Okay. And then the crime he pleaded guilty to was what?
- 20 A CSC second.
- 21 Q So criminal sexual conduct second degree?
- 22 A Yes.
- 23 Q And what would have been here in Dillon County?
- 24 A Yes.
- 25 Q So you were sitting right here --

- 1 A Right there.
- 2 Q -- like this lady here taking his guilty plea.
- 3 A Yes.
- 4 Q Okay. Now --
- 5 A But I'm a machine writer. So I wouldn't have had
- 6 anything.
- 7 Q You wouldn't have had the voice thing?
- 8 A Right.
- 9 Q You would have been typing?
- 10 A Right.
- 11 Q Okay. Now, as far as the lineup goes, people standing in
- 12 front of the judge during that guilty plea --
- 13 A Yes.
- 14 Q -- the Defendant, Mr. Flowers, would have been standing
- 15 on this side where I am?
- 16 A Right where you are.
- 17 Q Okay. And then next to him would have been his lawyer, I
- 18 guess?
- 19 A His lawyer.
- 20 Q And the Prosecutor would have been over here someplace?
- 21 A Over there. Yes.
- 22 Q Okay. During that guilty plea did the judge, of course,
- 23 go into a lengthy exchange with Mr. Flowers about him knowing
- 24 and waiving his rights to a jury trial and pleading guilty
- 25 freely and voluntary and things like that?

Hattie Gordon - Direct by State

47

1 A Yes.

2 Q Okay. And when he was finished with that, did he then
3 turn to the Solicitor and the Prosecutor and say, "Tell me
4 what happened or give me a summary of the facts of the case?"

5 A Yes.

6 Q And during that time that would have been when the
7 prosecutor described what the crime was against the child in
8 this case; correct?

9 A Yes.

10 Q All right. Now, what -- you're sitting right here like
11 this lady in front of me.

12 A Uh-huh.

13 Q What did you observe from Mr. Flowers? What was -- would
14 he do anything?

15 A Yes. He did.

16 Q What was he doing?

17 A Playing pocket pool.

18 Q What did it appear to you that he was doing?

19 A Playing pocket pool.

20 Q I'm sorry?

21 A I call it playing pocket pool. It's --

22 Q What, what does that mean?

23 A Fiddling with himself.

24 Q With his penis?

25 A Yes.

Hattie Gordon - Direct by State

48

1 Q Okay. I'd like to show you a paragraph from Dr. Swan's
2 report which I've shared with you prior to the hearing; is
3 that correct?

4 A Yes.

5 Q Do you remember looking at that? Do you see the quote
6 that she has down there for what you told her?

7 A Yes.

8 Q Is that pretty much what you told her?

9 A Oh, yes.

10 Q Could you read that into the record, please?

11 A He was jacking off in his jumpsuit.

12 Q Okay. Right here in court?

13 A Yes. Right there.

14 Q Thank you. Please answer any questions Mr. Falk may have
15 or the Judge may have.

16 A Thank you.

17 Q Oh, one more thing, one more thing. Did you tell anybody
18 else about what happened at the time?

19 A Oh, no.

20 Q Okay. And why was that?

21 A Because I'm not supposed to interrupt the record. I just
22 take the record.

23 Q Okay. Thank you, ma'am.

24 A You're welcome.

25

CROSS EXAMINATION

Hattie Gordon - Cross by Respondent

49

1 BY MR. FALK:

2 Q Are you saying that he was exposed?

3 A No.

4 Q His hand was on the outside of his jumpsuit?

5 A Yes. He was handcuffed.

6 Q Okay. He was handcuffed like this?

7 A Uh-huh, but he had his hands there.

8 Q Okay. And was there a judge on the bench?

9 A Oh, yeah, uh-huh.

10 Q And the judge typically -- is the judge not looking at
11 the Defendant when he's --

12 A I don't think he's looking downward. I think he's
13 looking in his face to see what his response is.

14 Q Okay. So you're telling me though that the judge didn't
15 see this; is that correct?

16 A No. Yes. That's correct.

17 Q And --

18 A I don't know what the judge saw.

19 Q -- his lawyer, who's standing next to him, did he see it?

20 A I don't know.

21 Q The -- and there would have been a solicitor standing
22 over there?

23 A Yes.

24 Q And he's not standing right in front of you; is he?

25 A Yes. He is.

Hattie Gordon - Redirect by State

50

1 Q Well, I mean, isn't it more like he's standing about
2 here? Okay.

3 A Well -- no. He stands in that general area, but I could
4 still see everything going on.

5 MR. BOGLE: Let the record reflect she was motioning Mr.
6 Falk over to more where the court reporter is.

7 A Because I try to make sure they're close to me so I can
8 get a clean record.

9 Q And you didn't tell anybody else about this?

10 A No. You mean that day?

11 Q That day.

12 A Yes.

13 Q Did anyone else who you told did anyone see it?

14 A Yes.

15 Q But the judge didn't see it. Did one of the clerks see
16 it?

17 A No. I didn't talk to them about it. I don't know if
18 they saw it.

19 Q I have no further questions.

20 REDIRECT EXAMINATION

21 BY MR. BOGLE:

22 Q Who'd you talk with that also saw that?

23 A Transport officers that were taking him back to the
24 detention center.

25 Q Okay. And where would they have been standing in this

Amy Swan - Direct by State

51

1 scenario we outlined a minute ago?

2 A Close by him. They always stand close to the Defendant
3 when they're pleading.

4 Q Okay. Thank you, ma'am. Nothing further.

5 A Thank you.

6 MR. FALK: No redirect [sic].

7 THE COURT: You may step down. Thank you.

8 A Thank you.

9 MR. BOGLE: Your Honor, we'd ask that Ms. Gordon be
10 excused at this time.

11 THE COURT: Any objection?

12 MR. FALK: No objection.

13 THE COURT: The witness is excused.

14 A Thank you.

15 MR. BOGLE: At this time the State would call Dr. Amy C.
16 Swan.

17 Whereupon, Amy C. Swan is called to the stand, duly sworn
18 by the clerk and testified as follows:

19 THE CLERK: Be seated in the witness box. State your
20 full name for the Court, spelling your last for us, please,
21 ma'am.

22 MS. SWAN: Okay. My name is Amy C. Swan. That's S-W-A-
23 N.

24 DIRECT EXAMINATION

25 BY MR. BOGLE:

1 Q Good afternoon, Dr. Swan. What do you do for a living?

2 A I am a forensic psychologist.

3 Q Okay. And how long have you worked in that field?

4 A I have been working in that field for 19 years.

5 Q Now, you live in Florida; is that correct?

6 A I do.

7 Q Okay. Now, what states are you licensed to practice
8 psychology in?

9 A I'm licensed to practice in Florida, South Carolina and
10 Missouri.

11 Q What advance degrees do you have?

12 A I have a doctorate in clinical psychology.

13 Q And when we say psychology, what is that, what does that
14 term mean?

15 A Psychology is the study of the brain and behavior.

16 Q When we talk about the word forensic psychology, use the
17 word forensic along with the word psychology, what are we
18 meaning there?

19 A What that means is that it's psychology applied to
20 courses -- to cases involved in the legal system.

21 Q Have you had additional specialized training beyond your
22 doctorate degree in the area of forensic psychology?

23 A I have. I have had 929 hours since my doctoral degree in
24 the area of sex offenders, and 59 of those hours -- I'm sorry.
25 58 of those courses have been specifically in assessing the

Amy Swan - Direct by State

53

1 likelihood that an individual has to commit another sexual
2 crime.

3 Q And Doctor, do you, in your capacity as a forensic
4 psychologist, do you have memberships in professional
5 organizations --

6 A I do.

7 Q -- you can tell us about?

8 A I am a member of the American Psychological Association,
9 the Association for the Treatment of Sexual Abusers, which is
10 a large international organization. I belong to the Florida
11 Chapter of that organization. I also belong to the
12 International Association of Forensic Nurses, and also the
13 Association of State and Provincial Psychology Boards.

14 Q Now, Dr. Swan, does your work allow you or have you
15 conducted forensic evaluations of people?

16 A Yes. It does.

17 Q Have you worked directly with sex offenders?

18 A Yes. I have for 29 years.

19 Q And about how many sex offenders have you evaluated for
20 different reasons?

21 A I have evaluated approximately 915 sex offenders under
22 the sexually violent predator laws in four states, and I've
23 evaluated approximately 500 sex offenders in different
24 capacities such as sentencing evaluations, child pornography
25 cases.

- 1 Q Okay. So the types of cases, pre-commitment, ones like
2 this one?
- 3 A Yes.
- 4 Q Sentencing cases?
- 5 A Yes.
- 6 Q What about annual reviews for someone who's already been
7 committed to a sexually violent predator program?
- 8 A That is correct.
- 9 Q Okay. In criminal cases you've done those?
- 10 A Yes.
- 11 Q What about child pornography cases?
- 12 A Yes. Child pornography cases.
- 13 Q Do you have any involvement with the licensing board of
14 the State of Florida?
- 15 A I do. I'm employed by the licensing board of Florida,
16 the Department of Health. When they have a licensed
17 individual who has gotten into trouble because of their sexual
18 behavior, I evaluate them to determine if they're safe to
19 practice and if they need to be restricted in their practice.
- 20 Q Now, Dr. Swan, have you been previously recognized as an
21 expert witness, not just in this state but in Florida as well
22 as this state in cases under the sexually violent predator
23 laws of these states?
- 24 A Yes. I have.
- 25 Q About how many times?

Amy Swan - Direct by State

55

1 A Approximately -- did you ask me how many times I'd been

2 --

3 Q All states.

4 A Oh, okay.

5 Q This is for sexually violent predator cases.

6 A Probably over a thousand times in -- I'm sorry. I'm
7 confused. I have testified in 280 sexually violent predator
8 cases.

9 Q Okay.

10 A And I have been credentialed as an expert in all of those
11 cases.

12 Q And about how many times have you been recognized as an
13 expert witness in the courts of South Carolina in sexually
14 violent predator cases?

15 A Over 50 times.

16 MR. BOGLE: Your Honor, at this time we would like to ask
17 the Court to recognize Dr. Amy C. Swan as an expert witness in
18 the field of forensic psychology.

19 MR. FALK: Without objection.

20 THE COURT: So qualified without objection.

21 BY MR. BOGLE:

22 Q Now, Dr. Swan, you mentioned you live in Florida.

23 A That is correct.

24 Q How is it you live in Florida and you're doing cases like
25 this here?

Amy Swan - Direct by State

56

1 A I have a contract with the Department of Mental Health in
2 South Carolina.

3 Q And how long have you had that contract with our
4 Department of Mental Health?

5 A Since 2013..

6 Q Okay. Do they pay you a flat fee to do these type
7 evaluations, these -- for a pre-commitment case like this, on
8 whether or not a guy should be committed, do they pay you a
9 flat fee for the case?

10 A Yes. They do.

11 Q How much is that?

12 A \$4,000 for each case and that includes my travel back and
13 forth to Florida, doing the evaluation and then testifying at
14 trial.

15 Q Okay. And, and do they pay you the same amount
16 regardless of which way your opinion goes?

17 A Yes. If I'm saying that the guy does not meet criteria I
18 get the same amount as I do if I say he does meet criteria.

19 Q Have you ever worked for defense attorneys in cases of
20 this nature in, in Florida, for example?

21 A Yes. I routinely work on defense cases typically when I
22 believe that the individual has received enough treatment and
23 is ready for release.

24 Q Now, going back to how long, how long, again, did you say
25 you've been a practicing psychologist?

Amy Swan - Direct by State

57

1 A I have been a practicing psychologist for 19 years.

2 Q In those 19 years have you ever faced discipline by a
3 licensing board, by the board that gives you your license to
4 practice psychology?

5 A No. I have not.

6 Q How about have you -- in those 19 years have you ever had
7 -- faced discipline from an organization you were a voluntary
8 member of?

9 A Yes.

10 Q What organization was that?

11 A This is the Association for the Treatment of Sexual
12 Abusers, and it would not be considered discipline because
13 it's not that type of infraction, but it is -- they have
14 indicated that I violated an ethical standard of the
15 organization.

16 Q This was a complaint made in 2014?

17 A That is correct.

18 Q Okay. What was it that they said you did wrong?

19 A They said that I used an outdated interview and that I
20 placed too much weight on it in my testimony.

21 Q Now, what's the difference between facing discipline from
22 a voluntary organization like the association you just
23 mentioned or a licensing board that gives you your license to
24 practice psychology?

25 A Well, if you are disciplined by the licensing board that

1 means you've broken the law with regard to the practice of
2 psychology, and that's not what occurred in this case. All
3 voluntary organizations have a list of standards that they
4 want you to adhere to, and so they determined that I violated
5 one of those standards.

6 Q So basically they called you for using an outdated
7 interview with some guy?

8 A That is correct.

9 Q And what was the, the sanction or discipline they imposed
10 that you had to do to, to make them satisfied with your
11 behavior?

12 A They indicated that I needed to stop using that interview
13 and submit two reports for them to review, and I did that, and
14 I am still a member in good standing of that organization.

15 Q In fact, you were at their national convention about two
16 weeks ago; weren't you?

17 A Yes. I was.

18 Q In Kansas City, I believe?

19 A In Kansas City. That's correct.

20 Q Okay. Now, did this complaint also go to the American
21 Psychological Association?

22 A It did. It was filed with the American Psychological
23 Association, and they determined that the claim -- complaint
24 did not have merit and they dismissed it.

25 Q Okay. Now, Doctor, let's talk about Mr. Flowers.

Amy Swan - Direct by State

59

1 A Yes.

2 Q How did you become involved in this particular case that
3 we're here about today?

4 A I was appointed by the court to evaluate Mr. Flowers.

5 Q And what type of evaluation were you asked to do?

6 A This is a pre-commitment evaluation or an evaluation to
7 determine if the individual has a mental abnormality or
8 personality disorder that makes them likely to engage in acts
9 of sexual violence if not confined in a secure facility for
10 care, control and treatment.

11 Q Now, could you tell the jury briefly what your protocol
12 is, your step-by-step method in doing a case like this?

13 A Yes. I receive a package of information from the
14 Attorney General's Office and I review that thoroughly and
15 then I set an appointment to evaluate the person that I'm
16 assigned. When I get that person in front of me, I talk about
17 everything from the day they're born until the day they're
18 sitting in front of me, and I talk about their family. I talk
19 about their education. I talk about whether they have an
20 abuse history. I talk about their occupational history and
21 their relationship history, their medical history, their --
22 and their sexual history, and then I talk about the sexual
23 crimes that they were either charged with or convicted of.

24 Q Now, as part of this evaluation did you meet with and
25 interview Joshua Flowers face to face?

Amy Swan - Direct by State

60

1 A Yes. I did. I saw him on July 20th, 2016.

2 Q Hold on. Let's let the noise -- that and the trains.

3 Again, what was that date again, please?

4 A It was July 20th, 2016.

5 Q And how long did you interview Mr. Flowers?

6 A Well, the interview only lasted for one hour because Mr.
7 Flowers became angry and stormed out of the interview.

8 Q Okay. Now, normally when you do these types of
9 interviews about how long can they take?

10 A Well, anywhere from an hour and a half to -- I've
11 actually had one that lasted seven hours.

12 Q Okay. Is the guy that you interviewed in the courtroom
13 today?

14 A Yes. He is.

15 Q Just for the record you've got to identify him. Would
16 you identify him for the record?

17 A Yes. It's the man sitting next to Mr. Falk in the red
18 tie.

19 Q Okay. Let the record reflect she's identified the
20 Respondent. Now, at the beginning of this evaluation process
21 did you explain to Mr. Flowers what it was about and what the
22 purpose was?

23 A Yes. I did.

24 Q And did he sign a consent form agreeing to be evaluated?

25 A Yes. He did.

Amy Swan - Direct by State

61

1 Q Now, in addition to interviewing him like you talked
2 about a minute ago, you mentioned a minute ago getting
3 information, documentary information. What type of
4 information, written information did you get about Mr.
5 Flowers?

6 A I got police reports. I got witness statements. I got
7 court information about the proceedings that occurred in
8 court. I got background information.

9 Q Did you get information from the Department of
10 Corrections about his stay there?

11 A I did.

12 Q Okay. So police reports for the crimes, witness
13 statements, background information like that?

14 A That is correct.

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

17 A Yes. It is.

18 Q And did you consider and rely upon that information,
19 along with the interview of Mr. Flowers and any scoring or
20 testing you did in making a conclusion or arriving at a
21 conclusion about him?

22 A I did.

23 Q Now, based upon your review of Mr. Flowers, I'd like to
24 approach you right now if I can. I hand you what's been
25 marked as State's Exhibit Number One, an indictment and

Amy Swan - Direct by State

62

1 sentencing sheet here in Dillon County, indictment number
2 2010-GS-17-358. Is that a document or documents that you have
3 looked at in your preparation for testimony and your
4 evaluation of Mr. Flowers?

5 A Yes. It is.

6 Q Okay. What is the date of that conviction?

7 A The date of the conviction is 4 -- April 23rd, 2010.

8 Q And what is the crime that Mr. Flowers was convicted of?

9 A He was convicted of criminal sexual conduct in the second
10 degree.

11 Q Did he plead guilty to it or was this a trial? Can you
12 tell from that sheet?

13 A He, he pled guilty.

14 Q Okay. And beneath that is the original indictment. Was
15 he indicted for the same charge or a different charge?

16 A He was actually indicted for criminal sexual conduct
17 with a minor, victim under the age of 11.

18 Q Okay. Now, are these the type of documents typically
19 looked at by experts in your field?

20 A Yes. It is.

21 Q Is criminal sexual conduct in the second degree, the
22 crime he pleaded guilty to, is this a sexually violent crime
23 under the laws of the State of South Carolina?

24 A Yes. It is.

25 Q And looking at it again, what was the sentence of the

Amy Swan - Direct by State

63

1 court that he received?

2 A The sentence that he received was 20 years suspended to
3 eight years followed by five years of probation.

4 Q Okay.

5 MR. BOGLE: Your Honor, at this time we'd move to
6 introduce into evidence State's Exhibit Number One, the
7 conviction for criminal sexual conduct in the second degree.

8 MR. FALK: Your Honor, may we approach just briefly?

9 (Whereupon, a bench conference is held in the presence
10 but out of the hearing of the jury.)

11 MR. FALK: No objection, Your Honor, as to that.

12 THE COURT: In without objection with redaction.

13 (State's Exhibit Number One [Sentencing Sheet] admitted
14 into evidence and appropriately marked.)

15 BY MR. BOGLE:

16 Q Now, Dr. Swan, as part of your work on this case, were
17 you asked to try and to see if there was a diagnosis of a
18 mental abnormality that Joshua Flowers has?

19 A Yes. I was.

20 Q Okay. And as part of that you're required to look at the
21 background information behind a criminal conviction like the
22 one I just handed up; is that right?

23 A That is correct.

24 Q Now, why is it necessary to look at the underlying
25 details behind the conviction?

1 A Well, one of the things I have to determine if he has a
2 relevant mental abnormality that would predispose him to
3 committing future acts of sexual violence. So if he doesn't
4 have any kind of diagnosis then he wouldn't meet criteria
5 because I need the mental abnormality or the diagnosis and the
6 predisposition to commit future sexual crimes.

7 Q Okay. Looking at this particular crime, would you
8 describe for the jury the relevant facts and circumstances
9 behind this conviction for criminal sexual conduct in the
10 second degree that you found important and necessary for your
11 diagnosis?

12 A Yes. This case involved an eight year old boy named
13 Minor 1, and he went camping in Little Pee Dee State Park in
14 Dillon, South Carolina, and his two older brothers, who were
15 16 and 17, went with him. He stated that when he and Mr.
16 Flowers went into the restroom that Mr. Flowers grabbed him,
17 pulled him into the shower, pulled his pants down and grabbed
18 his private parts. Minor 1 said that he yelled at Mr. Flowers to
19 stop but he did not stop. So he told him a second time to
20 stop and then Mr. Flowers stopped. Mr. Flowers told Minor 1 not
21 to tell anyone, but he told his mother when he went home, and
22 Minor 1 reported that Mr. Flowers performed oral sex on him.

23 Q And did this go to the police, a Lieutenant Young, was he
24 involved in the case?

25 A Yes. It was.

Amy Swan - Direct by State

65

1 Q Okay. When the police interviewed Mr. Flowers about what
2 happened -- now, you say it happened in Pee Dee State Park
3 here in Dillon County?

4 A That is correct.

5 Q Okay. Were they coming from North Carolina? Is that
6 what happened?

7 A Yes.

8 Q Okay. But the crime happened here?

9 A Right.

10 Q When law enforcement got involved, what did Mr. Flowers
11 tell law enforcement when they got involved in the case?

12 A He told the police that when they -- when the police
13 officer talked to him, he got really quiet, and the police
14 officer wanted to make sure he understood why he was talking
15 to him, and he said it was an investigation concerning some
16 kids, and Mr. Flowers admitted that he removed Minor 1's pants
17 and fondled him, and he said, "I touched Minor 1, also. All I
18 did was jack him off while we were camping. It happened in
19 the bathroom and shower. I pulled his pants down and jacked
20 him off with my finger. Minor 1 said that it tickled. Minor 1 told
21 me to stop and I did. I told him not to say anything. I
22 wasn't thinking. I wasn't thinking until after it happened.
23 I realized that it was wrong. I felt awful."

24 Q Okay. And it's necessary to look at these details in the
25 police reports; is that right?

1 A That is correct.

2 Q Now, you mentioned a minute ago Mr. Flowers told the
3 police, "I touched Minor 1, also." Also means -- was there
4 another child who was touched?

5 A Yes. There was a seven and a half year old boy named
6 Minor 2 .

7 Q Okay. So now, in this particular case that were
8 involving a boy named Minor 1, how old was Minor 1 when this -- it's
9 according, according to the police reports that you've looked
10 at, how old was Minor 1 when this crime happened?

11 A He was eight.

12 Q Okay. Did you talk to Mr. Flowers about this crime?

13 A Yes. I did.

14 Q What did he say to you that you found relevant in making
15 your diagnosis about Mr. Flowers or trying to reach a
16 diagnosis about him?

17 A He told me, "The only reason I pleaded to them, the
18 charges, was the time I was facing, 60 years here with the
19 kidnapping charge. They dropped the kidnapping charge as part
20 of the plea deal. I signed the plea deal for eight years, but
21 when I went before the judge he gave me 20 years suspended to
22 eight, which wasn't what I agreed to." So when I asked Mr.
23 Flowers why he was charged with these crimes he denied that he
24 did them to me, and when I asked him why he was charged with
25 the crimes and why he stood in front of the judge and accepted

Amy Swan - Direct by State

67

1 the plea saying that he did the crimes if he wasn't guilty, he
2 said, "I don't know." When I indicated that there were three
3 different boys that were alleging that he sexually abused
4 them, he again said, "I don't know." So when I showed him the
5 statement that his mother provided to police in which she said
6 that --

7 MR. FALK: Objection, Your Honor. Hearsay.

8 Q Let me rephrase the question a second. Was there a
9 statement in the police records that Mr. Flowers' mother gave
10 the police?

11 A Yes.

12 Q Okay. And why was it -- and you read it?

13 A Yes.

14 Q Okay. You never talked to her?

15 A I did not.

16 Q Okay. Why was it necessary to confront Mr. Flowers with
17 this statement his mother made to the police in order to
18 evaluate him about whether or not he had a mental abnormality?

19 A He denied that he'd ever touched any child sexually, but
20 the information that his --

21 Q Wait. Wait. Before you say what she said, so the reason
22 you had to confront him with this thing from his mother, she
23 had written something down; right?

24 A Yes.

25 Q And you had to confront him with it because why?

1 A To understand why she would say something like that if
2 he'd never touched any child.

3 Q Okay. Now, without asserting that what his mother says
4 is true or not true, what was the information that his mother
5 gave the police?

6 A His mother indicated that when she found out that he was
7 going on a camping trip she asked him not to go, but she said
8 that he was 18 and she couldn't force him, she couldn't stop
9 him, and when the police officer asked her why she, she didn't
10 want him to go she said that she didn't feel comfortable with
11 him going camping.

12 MR. FALK: Objection, Your Honor. I'm not sure how this
13 is --

14 MR. BOGLE: It's not being offered for the truth of the
15 matter asserted. It's showing the -- it's offered to show
16 part of the basis for her diagnosis how Mr. Flowers reacted to
17 her when she told him this information, given the fact that he
18 was denying guilt to her initially.

19 THE COURT: Okay. I have to overrule the objection based
20 on justification there.

21 Q Please continue.

22 A So she indicated that she didn't feel comfortable with
23 him going camping, and she told him to stay away from kids and
24 not to be alone with them, and when the detective asked her
25 why she had that feeling and why she said that, she indicated

Amy Swan - Direct by State

69

1 that there were allegations that --

2 MR. FALK: Same objection, Your Honor.

3 MR. BOGLE: Same response, Judge.

4 THE COURT: Overruled. Noted though.

5 Q She responded there were what, allegations?

6 A Allegations.

7 Q Of what?

8 A That he touched his cousins when he was in South Carolina
9 before and yes.

10 Q Now, this camping trip to South Carolina, why was Mr.
11 Flowers on a camping trip with these young boys to begin with?

12 A He worked at the church.

13 Q So it was a church sponsored camping trip?

14 A He volunteered at the church, yes, to work in the
15 children's ministry.

16 Q Okay. Now, going back to your conversation with Mr.
17 Flowers, you showed him what his mother had told the police.
18 You offered that to him. What happens next?

19 A Well, he said, "Why don't I have that piece of paper? I
20 have every piece of paper involved in my case, and I don't
21 have that one." So I showed him the police report, and at
22 that time he became very surling and belligerent. He said, "I
23 was drunk when I went in," and when I showed him the police
24 report that it didn't indicate that he was under the influence
25 of alcohol or drugs because that's one of the first things

Amy Swan - Direct by State

70

1 they ask you before you give a statement, and there was no
2 indication that he was drunk when he went in to talk to the
3 police, and then he said, "I'd rather talk to my lawyer.
4 You're assuming I did it," and when I showed him the statement
5 in which he admitted that he had committed the crime, he asked
6 me, "Why are you sitting here antagonizing me? I'm not going
7 to sit here and let you antagonize me. I'm going to let my
8 lawyer know," and, "my lawyer know," and so then he said, "Do
9 I have to stay here?" And I said, "No. I'm not going to make
10 you stay here," and he left the room in a huff.

11 Q Again, what sentence did he get for this particular crime
12 pleading guilty to criminal sexual conduct in the second
13 degree involving the seven and a half to eight year old boy
14 here in Dillon County? What did he get?

15 A He got 20 years suspended to eight years followed by five
16 years of probation.

17 Q Now, as part of this case were you also -- I'd like to
18 hand you a copy of this document right here --

19 A Yes.

20 Q -- a bill of information from the Scotland County
21 Superior Court in North Carolina.

22 A Yes.

23 Q Is that a document you've looked at before?

24 A Yes. It is.

25 Q Okay. And as part of your investigation, were you

Amy Swan - Direct by State

71

1 looking for other crimes that Mr. Flowers might have been
2 convicted of outside of South Carolina?

3 A That is correct.

4 Q And is that what this is?

5 A Yes.

6 Q What was he convicted of in North Carolina?

7 A In North Carolina he was convicted of taking indecent
8 liberties with a child.

9 Q And about when was it this conviction took place based on
10 what you're looking at and the documentation and your, and
11 your examination of records in this case?

12 A This conviction occurred in 2009.

13 Q Okay. A year before the conviction here in Dillon?

14 A Yes.

15 Q Okay. Now, was it necessary to look into his out-of-
16 state convictions since it was indecent liberties with a
17 child?

18 A Yes. It's important that I look at all information
19 involving either arrests, convictions or other known sexual
20 behavior in order for me to determine if he has a diagnosis
21 that would predispose him to commit future sexual acts.

22 Q Okay. What are the underlying details about the North
23 Carolina conviction, age of victim, sex of victim, when he was
24 arrested for the crime, what are the underlying details that
25 you found significant you can tell this jury about?

Amy Swan - Direct by State

72

1 A On November 19th, 2008, Mr. Flowers was arrested in
2 Dillon. I'm sorry, in North Carolina, for indecent liberties
3 with a child and crimes against nature. The victim was seven
4 and a half year old Minor 2. Minor 2 was autistic. He had a
5 speech impediment, and he had the mind of a four to five year
6 old child. Minor 2's mother was doing some work at Grace
7 Baptist Church. She was painting.

8 Q Now, is this the same church in North Carolina that he
9 was involved with?

10 A Yes. It is.

11 Q Okay. Go ahead.

12 A Okay. And she took Minor 2 with her, and Mr. Flowers was
13 there doing some cleaning, and he took Minor 2 into the nursery
14 with him because, as I said previously, he worked in the
15 children's ministry, the children's church, and about a month,
16 about five weeks later after the painting occurred, Minor 2's
17 mother offered to give Mr. Flowers a ride home from church,
18 and at that time Minor 2 began acting out and refusing to get
19 in the car because he said he didn't want to ride with Joshua
20 or Mr. Flowers because Joshua was stupid. So his -- Mr.
21 Flowers did not ride home with him, and when they got home
22 Minor 2's mother asked why he wouldn't get in the car and why
23 Joshua was stupid, and Minor 2 said that Mr. Flowers liked to
24 put things that boys T-T with in their mouth, referring to his
25 penis. Minor 2 stated that it happened in the babies' room

Amy Swan - Direct by State

73

1 when his mother was painting, and his mother reported it to
2 the police, and Lieutenant Young spoke with Minor 2 , and Minor 2
3 didn't want to be separated from his mother, and so when the
4 lieutenant did the interview his parents were in the room, and
5 each time he asked him about what happened with Mr. Flowers,
6 Minor 2 put his head in his mother's lap and started whining.
7 So Minor 2 said -- told the lieutenant that he thought Josh was
8 stupid and that he was -- he subsequently said that, "Mr.
9 Flowers is really bad. He wants boys to put his T-T in their
10 mouths, and he put his T-T in my mouth." So after speaking
11 with Minor 2 , as he was talking about what Mr. Flowers made him
12 do, he pointed to his penis.

13 Q Now, let me pause for a second before I get to the next
14 question and ask you this, the fact that Mr. Flowers would do
15 this in a part of the church while the child's mother is
16 probably not that far away doing something else in the same
17 building, doesn't that kind of increase the risk of getting
18 caught?

19 MR. FALK: Objection, Your Honor. I think he's leading.

20 Q Let me rephrase the question.

21 THE COURT: Rephrase.

22 Q The fact that you would do something in a public place or
23 an open place like a church when a relative of the victim is
24 so nearby, we talk about risk factors. Is there risk factors
25 involved here?

1 A Anytime you commit a sexual crime in a situation in which
2 you have a high risk of getting caught, that indicates that
3 that drive to engage in that deviant sexual behavior is
4 strong, and there were indications that Mr. Flowers was caught
5 in the church behind the sound booth with a little girl and
6 that two other boys were also involved in this crime at the
7 church whose parents didn't want to press charges.

8 Q Now, going back to where we were, Joshua is telling the
9 lieutenant what happened. The lieutenant talks to Mr.
10 Flowers. What about Mr. Flowers' account to the police
11 concerning Minor 2 did you find significant?

12 A During the interview with the police, Mr. Flowers
13 admitted that he removed Minor 2's pants and performed oral sex
14 on him. He said once a month he helps out with Grace Church,
15 and he went into the nursery by himself, and Minor 2 walked in
16 when he was walking out. He said that Minor 2 wanted to play
17 with him, but he didn't want to play with Minor 2. So Minor 2's
18 mother asked him to do something, but he went into the
19 nursery, and Minor 2 followed him, and then he said, "My mom
20 says it is hormones or something. I pulled Minor 2's pants
21 down and then I walked away. All I did was jerk him off.
22 That was it. My hand is not the only thing I used. I used my
23 mouth. I sucked him. I sucked him not even three minutes. I
24 sucked his penis. All Minor 2 said was stop. He said it when
25 I pulled his pants down and when I started sucking. Minor 2

Amy Swan - Direct by State

75

1 was standing up. I was kneeling down. I laid Minor2 down on
2 the floor. I don't remember anything else happening."

3 Q Now, about how old was Minor2 when this happened based on
4 what you could derive from the police reports?

5 A Minor2 was seven and a half.

6 Q Okay. But you said there was a speech impediment or a
7 mental health issue with him?

8 A Yeah. He was autistic. So his communication was
9 limited, and he was -- he had the mind of a four or five year
10 old rather than a seven and a half day -- year old.

11 Q And when it came time -- now, did you then proceed --
12 going forward -- step forward in time. It's time for your
13 interview with Mr. Flowers --

14 A Yes.

15 Q -- you're talking about these crimes.

16 A Yes.

17 Q When you got to the point to talk to him about the North
18 Carolina conviction, you brought in Minor2, what'd he say?

19 A He didn't say anything because he had already left the
20 interview at that time.

21 Q Okay. Now, going back to the South Carolina crime,
22 Exhibit Number One which we've introduced into evidence
23 already, in this particular case, what was he indicted for?

24 A He was indicted for criminal -- this case or the
25 previous?

1 Q This is South Carolina, Dillon.

2 A Okay. South, criminal sexual conduct with a child, and
3 there's one other thing. Let me see.

4 Q Was it in the first degree?

5 A In the first degree, yes.

6 Q I'll show it to you right here.

7 A Oh, okay.

8 Q Okay. Is that it?

9 A Yes. Criminal sexual conduct with a minor, victim under
10 11 years old.

11 Q Okay. And was he also indicted for another charge?

12 A Yes.

13 Q Kidnapping?

14 A Kidnapping.

15 Q And as part of the plea agreement the kidnapping was
16 dropped?

17 A That is correct.

18 Q And the criminal sexual conduct with a minor was reduced
19 to criminal sexual conduct in the second degree?

20 A That is correct.

21 Q But criminal sexual conduct in the second degree is that
22 still a sexually violent crime? Is it on the list in our
23 statute?

24 A Yes. It is.

25 Q Okay. Now, did you rely solely on his past criminal

Amy Swan - Direct by State

77

1 history in making an evaluation or a conclusion about Mr.
2 Flowers?

3 A I did not.

4 Q Would it be ethical even to do so?

5 A No.

6 Q Okay. But what is it about his past criminal history did
7 you find significant as part of your comprehensive evaluation
8 about this guy?

9 A What I found was that he didn't really have any crimes
10 apart from his sexual crimes, and this is a common pattern for
11 a pedophile. So what I look for when I'm assessing an
12 individual is that there are two paths to committing sexual
13 crimes. One is having a criminal lifestyle like being a
14 general criminal, and one is having a sexual disorder like
15 sexual arousal to males and females under the age of 13, and
16 what I found was that Mr. Flowers had the pathway of having a
17 sexual disorder where he was attracted to prepubescent males
18 and females, but he didn't have the criminal lifestyle. I
19 also found that his crimes were really, really predatory.

20 Q Why would you say that? Why were they predatory?

21 A Well, because it showed that his drive for sex with males
22 and females under the age of 13 was really strong, and what I
23 found was that he insinuated himself into churches to prey on
24 girls and boys under the age of 13. For example, he helped
25 with children's church. He, in Minor 2, he chose a child who

1 had a speech impediment and was mentally challenged so he'd be
2 less likely to tell. He told both of his victims not to tell.
3 He befriended Minor 1's older brothers to get to Minor 1. He'd call
4 their house and talk to them and say, "Oh, let me talk to
5 Minor 1."

6 Q Were the older brothers on the same camping trip that
7 Minor 1 was on?

8 A Yes. They were.

9 Q Okay. Go ahead.

10 A When he was in prison in North Carolina, he called Minor 1's
11 house repeatedly trying to talk to Minor 1 to such a degree that
12 his mother had to call the prison and tell them not to let him
13 call their house anymore, and he molested Minor 2 while his
14 mother was in the next room and there were allegations that he
15 had the little girl behind the sound booth in the church when
16 other people were around.

17 Q Now, as part of your comprehensive evaluation, do you
18 talk to the offender, a person like Mr. Flowers, about their
19 sexual interests?

20 A I do.

21 Q In fact, ask him what are your sexual interests?

22 A Yes.

23 Q Because you've got the stuff on paper.

24 A Yes.

25 Q Is it important to try and find as much as you can from

Amy Swan - Direct by State

79

1 their lips about their sexual interests --

2 A Yes.

3 Q -- how they perceive their sexual interests?

4 A Yes.

5 Q Why is that important?

6 A It's important because that helps me determine -- there
7 are some people that molest children, but they don't do it
8 because they're sexually attracted to males and females under
9 the age of 13. They do it for other reasons. So I need to
10 talk to the individual about their sexual history so I can
11 find what the drive was behind the sexual crime, whether it
12 was the sexual interest in the little boys and little girls or
13 was it some other reason.

14 Q And now when you use the phrase under the age of 13, are
15 you -- does that -- we use -- is that the equivalent of
16 prepubescent?

17 A It is prepubescent, and what prepubescent means is that
18 the individual has not yet entered puberty. They don't have
19 any secondary sexual characteristics like breasts or pubic
20 hair.

21 Q So what did Mr. Flowers say to you when you tried to turn
22 the interview into asking him about his sexual interests?

23 A Well, he was no longer present in the interview by the
24 time that came around because he had gotten up and left, but
25 he did tell me that he was a homosexual male and that he had

Amy Swan - Direct by State

80

1 married another male while he was in prison but they had never
2 lived together, and he denied that he was sexually aroused by
3 children.

4 Q Now, as part of his records, you have the interview with
5 him, but you also have his prison records; right?

6 A I do.

7 Q Could you find any evidence in those prison records like
8 where it lists spouse or next of kin or anything like that
9 relating to a marriage that occurred between him and another
10 inmate?

11 A I did not, and for that reason I wasn't entirely clear if
12 it was a legal marriage or if they just determined that they
13 wanted to be married to each other. The law permitting gay
14 marriage was not in effect till 2015, and when I asked Mr.
15 Flowers when he got married, and I saw him in 2016, he said
16 maybe a couple of years ago. He didn't remember the date. I
17 thought it was unusual that he didn't remember the date that
18 he got married, and typically in prison you have to get
19 permission. You go to the chaplain. You ask for permission
20 to marry, and then a determination is made if there's any
21 reason why you couldn't marry in prison, and I didn't see any
22 of that paperwork in his records.

23 Q Okay. Now, is sex offender treatment offered in some of
24 the prisons in South Carolina?

25 A It is.

Amy Swan - Direct by State

81

1 Q Is it necessary doing your type of job, evaluating a guy
2 like Mr. Flowers, to look and see if they had any kind of sex
3 offender treatment while they were confined?

4 A It is. If they've had enough sex offender treatment so
5 that they're no longer at risk to commit a sexual crime then
6 they wouldn't meet criteria under this act. So it's really
7 important that I assess what kind of sex offender treatment,
8 if they had any at all.

9 Q And is this something done by other experts in your
10 field?

11 A Yes.

12 Q And do you rely upon the existence of such information in
13 making a conclusion about Mr. Flowers?

14 A Yes. If he had --

15 Q Did he have any -- I'm sorry. Go ahead.

16 A If he had treatment, I would get the records to see how
17 he did in that treatment.

18 Q Okay. And you had access to the Department of
19 Corrections' records for his entire stay there; is that
20 correct?

21 A Yes. I did.

22 Q Were there any records of him getting sex offender
23 treatment while in prison?

24 A No.

25 Q Okay. What impact does that have on your opinion, your

1 conclusion about Mr. Flowers?

2 A What that tells me is that nothing has changed with him
3 that would stop him from molesting little boys and girls
4 because what we know is that the primary means by which sex
5 offenders would stop sex offending is if they were physically
6 unable to do it or if they have sex offender treatment, and
7 neither of those has occurred.

8 Q Have you seen anything in the records about Mr. Flowers
9 to indicate he has a physical limitation, a physical infirmity
10 that would keep him from molesting young children?

11 A No.

12 Q Now, based upon your examination of Mr. Flowers, your
13 review of his records, the things you looked at, were you able
14 to diagnose him with a mental abnormality that is important in
15 this case?

16 A Yes.

17 Q What'd you diagnose him with?

18 A I diagnosed him with pedophilic disorder, sexually
19 attracted to males, nonexclusive type.

20 Q Okay. Let's break that down. Pedophilic disorder means,
21 means what?

22 A That the individual is sexually interest in girls and
23 boys who have not yet entered puberty, and I said that he was
24 sexually attracted to males because he was convicted of the
25 two crimes involving males. There were allegations that he

Amy Swan - Direct by State

83

1 also molested a little girl, but I didn't have the records on
2 that to include it in my diagnosis, and Mr. Flowers did not
3 reveal to me that he was sexually interested in children at
4 all. So to give him the benefit of the doubt, I only said
5 males, and the non-exclusive part means that he's also
6 sexually interested in adult partners.

7 Q Okay. Now, so to meet this criteria, we got the two
8 crimes you've described involving the two young boys; right?

9 A That's correct.

10 Q Okay. And one of them -- I guess what I'm getting is
11 how'd he meet the criteria for pedophilic disorder? Could you
12 expand upon that?

13 A So the technical definition of pedophilic disorder is
14 that over a period of at least six months the individual has
15 sexually arousing fantasies, urges or behaviors involving
16 girls and boys who are under the age of 13 and that he has
17 acted on that sexual interest and --

18 Q Go ahead.

19 A -- the individual must be at least five years older than
20 the victim in order to qualify for a diagnosis of pedophilic
21 disorder.

22 Q So what is it he did that qualified, in your opinion, to
23 qualify him for that disorder?

24 A So Mr. Flowers has been convicted of molesting a seven
25 and a half year old male and an eight year old male. There

1 were allegations that he molested two other little boys,
2 little girl and his cousins in South Carolina. He was kicked
3 out of a church for being in the sound booth with the little
4 girl. His mother didn't want him to go on the camping trip
5 because she warned him to stay away from kids, and the other
6 piece that was really important was what Ms. Gordon testified
7 to because I have to find that he had sexually arousing
8 fantasies, urges or behaviors over a period of at least six
9 months. Now, both of his crimes occurred in October of 2008.
10 So that's not a six-month period, but when Mr. Flowers
11 masturbated in court when they were talking about the crimes
12 that he committed, that indicated that he was still aroused by
13 little boys and, in fact, the crimes occurred in October of
14 2008, and he was masturbating about his crimes in April of
15 2010. So that's a period of 18 months and that qualifies as a
16 diagnosis of pedophilic disorder.

17 Q Now, when you do these evaluations is there a tool you
18 use, a tool that you use to measure a person's risk to
19 reoffend?

20 A Yes. There is.

21 Q And what factors do you look at? What do you look at to
22 do that?

23 A So I look at static factors and dynamic factors.

24 Q And static factors, those are things that don't change;
25 right?

Amy Swan - Direct by State

85

1 A They are. Those are historical factors like how many
2 victims you've had, what kind of victims, were they males or
3 females, were they unrelated, were they strangers.

4 Q Okay. And what static -- what, what are the most
5 important static or unchanged risk factors did you find
6 regarding Joshua Flowers?

7 A The most important risk factor for Mr. Flowers is sexual
8 arousal to prepubescent children.

9 Q Is there something called the static-99R that you use in
10 determining or estimating a risk to reoffend?

11 A Yes. There is.

12 Q What is the static-99R? Who was it developed by?

13 A The static-99R was developed by Karl Hanson who is a
14 researcher in the area of sex offenders, and this instrument
15 is a 10-item instrument that is actually what we call an
16 actuarial instrument, and what we mean by actuarial is that
17 it's similar to the tables that are used in the insurance
18 industry to calculate premiums, and I'll give you an example.
19 We know that males under the age of 25 are more at risk of
20 having an automobile accident than older males and females,
21 and so their premiums are higher, and what this instrument
22 tells us is that individuals who commit sex crimes are more at
23 risk for committing sexual crimes once they've offended, and
24 therefore, the measures that we take to control them need to
25 be more stringent than with someone who's never committed a

1 sexual crime.

2 Q And by measures need to be more stringent, that would
3 include confinement for treatment --

4 A That --

5 Q -- like we're, like we're seeking here?

6 A That is correct. That is correct.

7 Q Now, Doctor, is the static-99R something was developed
8 studying thousands of inmates in multiple countries?

9 A Yes. The original study from which the static-99 was
10 developed included 30,000 different sex offenders in all
11 different countries.

12 Q And these are people who have been convicted and
13 reoffended; is that right?

14 A That is correct.

15 Q Okay. Now, when you scored him on the static-99R, it's a
16 sheet of paper; right?

17 A Yes.

18 Q It's got 10 different categories?

19 A Yes.

20 Q Now, what's the lowest score you can get on the static-
21 99R?

22 A The lowest score on the static-99 is a minus three, and
23 the highest score is a 12.

24 Q Where does the average sex offender score on -- based on
25 the studies they've done, where does the average sex offender

Amy Swan - Direct by State

87

1 score?

2 A The average sex offender scores a two.

3 Q And what did Mr. Flowers score?

4 A Mr. Flowers scored a four.

5 Q And what does that -- what's the effect of a four? What
6 does that do as far as your training and your understanding of
7 this scoring system?

8 A Mr. Flowers is in the 79th percentile, and what that means
9 is that out of every 100 sex offenders he would be higher risk
10 than 74 of them, and it means that he is twice as likely to be
11 arrested or convicted of another sexual crime than the average
12 sex offender.

13 Q Okay. Is there a way to also estimate what his chance of
14 committing a sex offense is say five years out?

15 A Yes. This tells if his -- this tells how likely he is to
16 be arrested or convicted of a sexual crime in five years.

17 What we want to know under this law is whether he will commit
18 another sexual crime in his entire life. So Mr. Flowers is 27
19 years old. The average sex offender stops committing sexual
20 crimes at the age of 60, but pedophiles or people who have
21 pedophilic disorder continue to sexually offend often into
22 late adulthood beyond 60. So what this tells us that -- is
23 that Mr. Flowers has at least 33 more years at risk of
24 sexually assaulting little boys and little girls, and it could
25 be longer than that.

Amy Swan - Direct by State

88

1 Q Now, is the static-99R, is that a tool that is commonly
2 used by experts in your field?

3 A Yes. It is.

4 Q Is it part of the basis of your opinion?

5 A Yes. It is.

6 Q Okay. Does it underestimate the risk to reoffend?

7 A It does.

8 Q Why is that?

9 A Well, it underestimates the risk for re-offense because
10 less than ten -- it's based on a sex offender being arrested
11 or convicted, and less than ten percent of individuals who
12 commit sex crimes are actually convicted. In fact, the number
13 is 3.3 percent actually get convicted.

14 Q Okay. Now, that's the static risk factors. A minute ago
15 you also referred to something called dynamic risk factors.

16 A Yes.

17 Q What does that phrase mean in the context of an
18 evaluation like this?

19 A Dynamic risk factors are changeable risk factors. These
20 are things that were occurring at the time of the sex offense
21 that increased his risk, but these are also the things that we
22 target in treatment because you can't change what happened in
23 the past about what kind of victims he had, how -- that sort
24 of thing, but we can change these dynamic risk factors so
25 that they could reduce his risk so that he won't reoffend

Amy Swan - Direct by State

89

1 again.

2 Q What type of -- based, based upon your experience doing
3 work in this type of field, what type of risk factors, dynamic
4 risk factors associated with offenders in cases like this,
5 which ones did you find for Mr. Flowers?

6 A The ones that I found for Mr. Flowers was lack of
7 emotionally intimate relationships with adults, and what this
8 means is that it applies to individuals who have no intimate
9 relationships and those his intimate relationships involved
10 repeated conflict and/or infidelity. What we typically look
11 at is whether they have ever lived with a partner, and Mr.
12 Flowers has never lived with a partner. He said that he was
13 married, but he got married in prison, and there's no
14 indication that he ever lived with a partner. He lacked
15 intimate relationships with adults because he was molesting
16 children, and that was the focus of his intimate attachments,
17 and as I said, although he married another individual in
18 prison, they never lived together.

19 Q Okay.

20 A I'm sorry. There are a couple of more that I --

21 MR. BOGLE: Judge, you want to take a stand down right
22 now?

23 THE COURT: We've been going for quite some time. Let's
24 take a 10-minute break. Do we have coffee? I know there's
25 some in my chambers anybody wants any coffee. The jury step

Amy Swan - Direct by State

90

1 back, please. Some Coca-Cola or something.

2 (Whereupon, the following takes place outside the
3 presence of the jury.)

4 THE COURT: All right. About ten minutes.

5 OFF THE RECORD

6 (On the record. The following takes place outside the
7 presence of the jury.)

8 THE COURT: You ready?

9 MR. BOGLE: Yes, sir.

10 THE COURT: Bring them on.

11 (Whereupon, the following takes place in the presence of
12 the jury.)

13 THE COURT: Okay.

14 MR. BOGLE: Thank you, Your Honor. May it please the
15 Court?

16 BY MR. BOGLE:

17 Q All right. Dr. Swan, let's wrap this thing up. We were
18 talking about dynamic risk factors a minute ago.

19 A Yes.

20 Q And you were talking about the lack of emotionally
21 intimate relationships with adults.

22 A Yes.

23 Q Would you wrap that up for us?

24 A Yes. So I think I was finished with that one..

25 Q Okay. What else? What's the next one then?

Amy Swan - Direct by State

91

1 A The next one was lifestyle impulsiveness, and what this
2 means it's low self control, chronic instability in
3 employment, irresponsible decisions and limited or unrealistic
4 long-term goals, and Mr. Flowers obviously demonstrated he had
5 substance abuse issues, which falls under this. He has
6 employment instability, low self control and irresponsible
7 decisions.

8 Q Okay. What was next as far as these types of dynamic
9 risk factors?

10 A The next one is poor problem solving, and with poor
11 problem solving that involves difficulties in generating a
12 good number of alternative solutions and then choosing the
13 best solution to fit the problem, and we know that he did that
14 because he had a problem with children, and he did not go
15 ahead and get help. He just continued to molest children.
16 Moreover, he clearly lacked consequential thinking because he
17 didn't seem to understand that if he kept doing it he could
18 get arrested.

19 Q Let's talk about that for a second. The crime in North
20 Carolina, the conviction is back in '09.

21 A Yes.

22 Q How much time did he get for that?

23 A He got 13 to 16 months.

24 Q Okay. And then he gets convicted again in South
25 Carolina?

1 A That's correct.

2 Q And gets some more time that you've already described for
3 that?

4 A That's correct.

5 Q Okay. Did he serve the same time at the same -- did he
6 serve these prison sentences, the both at the same time for
7 both sentences?

8 A No. He served time in North Carolina first. I believe
9 he actually served 14 months, and then he came to South
10 Carolina and started serving his sentence here.

11 Q Okay. Okay. Does he have an issue -- what's the next
12 dynamic risk factor that you found?

13 A The next one is resistance to rules and supervision, and
14 what that means is a defiant attitude to authority or a
15 history of oppositional behavior, and we know that he has that
16 because he acted surly and belligerent when I tried to
17 evaluate him. This also means failing to follow directions
18 and just in general resisting anything that has authority over
19 him, and Mr. Flowers demonstrated this because he broke the
20 law in the community. He was defiant to me, and when he was
21 in prison he got disciplinary infractions for refusing or
22 failing to obey the rules and regulations, inmate under the
23 influence for having homemade wine in prison, possession of
24 contraband or tobacco in prison, fighting without a weapon,
25 striking an employee, trafficking and trading in drugs,

Amy Swan - Direct by State

93

1 unauthorized part of an organization and interfering with
2 count, and he did that seven different times.

3 Q Now, in and of these selves, these prison violations
4 don't seem like major, major, major crimes. Why are they
5 significant to you in looking at a guy like Mr. Flowers?

6 A Well, because when you're in prison you are definitely
7 not in control and you are under someone else's authority, and
8 if you can't obey the rules and submit to authority you get in
9 trouble in prison and that's exactly what happened with Mr.
10 Flowers.

11 Q So he can't control himself in a 24-7 prison situation,
12 you have concern about him controlling himself on the outside?

13 A That's correct. If he can't control his behavior in
14 prison while someone's watching him 24 hours a day, then that
15 raises concerns for his ability in the community.

16 Q Are these dynamic risk factors that you've listed off for
17 the jury these last few minutes, are they significant with
18 regard to your opinion?

19 A Yes. They are.

20 Q And why is it important to look at both dynamic risk
21 factors and the static or unchangeable risk factors?

22 A Well, if you only looked at the static risk factors
23 there'd never been any chance that his risk would lessen, and
24 that's not fair to an individual, especially if they've had
25 treatment. So we look at these dynamic factors because those

1 are the ones that they target in treatment, and if they make
2 improvements in those, then they may reduce their risk.

3 Q Okay. Now, Dr. Swan, we showed you Exhibit Number One,
4 the conviction for criminal sexual conduct in the second
5 degree here in Dillon County.

6 A Yes.

7 Q Is criminal sexual conduct in the second degree a
8 sexually violent crime under our law?

9 A Yes. It is.

10 Q And you've already testified, but is it your opinion to a
11 reasonable degree of psychological certainty that Mr. Flowers
12 suffers from a mental abnormality?

13 A Yes. He does.

14 Q And what again was that mental abnormality?

15 A Pedophilic disorder, sexually attracted to males,
16 nonexclusive type.

17 Q Okay. And again, to a reasonable degree of psychological
18 certainty does this mental abnormality, this pedophilic
19 disorder that he has, sexually attracted to males, does it
20 affect his volitional and emotional capacity so that he is
21 predisposed to commit future sexually violent crimes?

22 A Yes. It does.

23 Q And when I say volitional capacity, what does that word
24 mean in the context of what I just asked you?

25 A Volitional just means his ability to control his

Amy Swan - Direct by State

95

1 behavior, and we've already seen that he can't even control it
2 in prison when he's being watched 24 hours a day, and in the
3 community he molested children.

4 Q Now, also to a reasonable degree of psychological
5 certainty, does Mr. Flowers, does this mental abnormality you
6 found and the other factors you've listed for the jury today
7 does this increase the propensity of Mr. Flowers to be
8 dangerous and commit future sexually violent offenses?

9 A Yes. It does.

10 Q Do you also have an opinion, again to a reasonable degree
11 of psychological certainty, does this propensity to commit
12 sexually violent crimes is it to such a degree that it poses a
13 menace to the health and safety of others?

14 A Yes. It does.

15 Q Do you also have an opinion, again, to a reasonable
16 degree of psychological certainty, does Joshua Flowers have
17 serious, have serious difficulty in controlling his behavior?

18 A Yes. He does.

19 Q And how has that been illustrated again?

20 A It's been illustrated by the fact that he knew that he
21 had a problem with children, he --

22 MR. FALK: Objection, Your Honor. May I approach?

23 THE COURT: Yes, sir.

24 (Whereupon, a bench conference is held in the presence,
25 but out of the hearing of the jury.)

- 1 BY MR. BOGLE:
- 2 Q Dr. Swan, the question I was asking you a minute ago is
- 3 whether or not again to a, to a reasonable degree of
- 4 psychological certainty does he have serious difficulty in
- 5 controlling his behavior regarding minors, prepubescent
- 6 minors? So let's talk about it in that terms.
- 7 A Yes.
- 8 Q Does he? Why is that?
- 9 A He does. Well, he molested multiple little boys and
- 10 girls that we're aware of and he should have known that he had
- 11 a problem and yet he did not do anything because that drive is
- 12 so strong that he continued to do it.
- 13 Q Now, was that drive reinforced when you learned what he'd
- 14 done in court when he was pleading guilty back in 2012?
- 15 A Absolutely.
- 16 Q Do you also have an opinion, again, to a reasonable
- 17 degree of psychological certainty, does Joshua Flowers meet
- 18 the legal criteria to be found to be a sexually violent
- 19 predator based upon your evaluation, the crimes he committed
- 20 and what we have here?
- 21 A Yes. He does. He has committed -- been convicted of a
- 22 sexual crime in South Carolina. He has the mental
- 23 abnormality, which is pedophilic disorder, and he -- nothing
- 24 has changed with him as far as his, his sexual drive to molest
- 25 little boys and girls, and therefore, he remains at risk to

Amy Swan - Direct by State

97

1 commit sexually violent offenses.

2 Q Is part of your job in preparing for testimony in a case
3 like this do you also check to see if he's facing any kind of
4 probation or community supervision if he's released by the
5 jury?

6 A I do.

7 Q What'd you find out?

8 A Well, I found out that he has two years of supervision
9 after he's released, and what that means is that he would be
10 mandated to get treatment during that supervision. However,
11 it's only outpatient treatment which they have for an hour or
12 an hour and a half once a week. It is not nearly the
13 intensity that would be needed to curb someone who's sexually
14 interested in little boys and little girls. That is if an
15 individual is aroused by little boys and girls when they're
16 17, they'll still be aroused when they're 70. It's a really
17 strong drive. The treatment that he would be receiving as
18 part of the process we're doing today he gets treatment four
19 days a week multiple hours a day because the intensity is
20 necessary to curtail the drive toward minors, and the
21 treatment lasts for an extended period of time, not just two
22 years because this is a particularly hard diagnosis to
23 eradicate.

24 Q Thank you, Dr. Swan. Please answer any questions counsel
25 may have or the Court may have.

Amy Swan - Direct by State

98

1 THE COURT: You all approach, please.

2 (Whereupon, a bench conference is held in the presence
3 but out of the hearing of the jury.)

4 THE COURT: Ladies and gentlemen of the jury, we're going
5 to stop for the night. Ten o'clock all right with you all?

6 MR. BOGLE: Yes, Your Honor. That's fine.

7 THE COURT: Okay. All right. You all have a good
8 evening. Remember all my instructions. Don't let anybody
9 approach you about this case. You all have a good evening and
10 we'll see you back here at ten and we'll resume then.

11 (Whereupon, the following takes place outside the
12 presence of the jury.)

13 THE COURT: Doctor, you can step down.

14 A Okay. Thank you.

15 THE COURT: See you in the morning.

16 MR. BOGLE: Thank you, Your Honor.

17 OFF THE RECORD

18 (On the record, November 7, 2017. The following takes
19 place outside the presence of the jury.)

20 THE COURT: I think we've got everybody.

21 MR. BOGLE: Okay.

22 THE COURT: Anything before we bring the jury back in?

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

24 MR. FALK: No, Your Honor.

25 THE COURT: Doctor, if you would return to the stand,

Amy Swan - Cross by Respondent

99

1 you're still under oath.

2 MS. SWAN: Okay.

3 THE COURT: Okay.

4 (Whereupon, the following takes place in the presence of
5 the jury.)

6 THE COURT: Good morning. We're ready to resume.

7 Mr. Falk.

8 MR. FALK: Can the court reporter hear me if I stand here,
9 as well?

10 COURT REPORTER: Just speak up.

11 MR. FALK: Okay.

12 CROSS EXAMINATION

13 BY MR. FALK:

14 Q Dr. Swan, can you hear me from here?

15 A Yes. I can.

16 Q All right. Thank you. So at the beginning of your
17 testimony you gave a little background of what your
18 professional career has been?

19 A That is correct.

20 Q And is it safe to say that since about 2005 most of your
21 professional career has been devoted to conducting forensic
22 interviews and testifying as an expert witness?

23 A That is correct.

24 Q So you no longer see any private patients; is that
25 correct?

1 A I do not.

2 Q Now, you have a contract with the --

3 A Let me correct that.

4 Q Absolutely.

5 A I do see private patients, but they're for evaluations.

6 I have a contract to do with South Carolina, Florida, Missouri

7 to do evaluations, but in my private practice in Fort

8 Lauderdale I do custody evaluations, child pornography

9 evaluations, sentencing evaluations for sex offenders. I just

10 don't do therapy anymore.

11 Q No -- that's -- I think that's what really I was

12 referring to.

13 A Yes.

14 Q And so you don't take part in any kind of treatment then?

15 A I don't.

16 Q And you have a contract with the State of South Carolina?

17 A I do.

18 Q And was that a yearly contract or how did that work or

19 how does that work?

20 A Yes. It's a yearly contract and it's been renewed every

21 year since 2013.

22 Q Okay. Well, I'm curious. How did the State of South

23 Carolina -- well, are there other private experts in the State

24 of South Carolina who conduct forensic interviews and

25 evaluations?

Amy Swan - Cross by Respondent

101

- 1 A The only one I know of is Dr. Martin.
- 2 Q And you don't know Dr. Maddox?
- 3 A Oh, I do know Dr. Maddox, and I'm aware that MUSC does
- 4 evaluations as well.
- 5 Q Susan Knight?
- 6 A Well, Susan Knight, Emily Gottfried, Dr. Mulbry.
- 7 Q Paul McKee or Geoff McKee?
- 8 A Paul -- Geoffrey McKee, yes.
- 9 Q So there are other experts in the State of South
- 10 Carolina?
- 11 A That is correct.
- 12 Q So how does -- how did the State of South Carolina -- and
- 13 who do you have the contract with, the Attorney General's
- 14 Office?
- 15 A No. Well, I have a contract with the Attorney General's
- 16 Office, but also with the Department of Mental Health.
- 17 Q What is your contract with the Attorney General's Office?
- 18 A That's on a case-by-case basis. They send me a contract
- 19 if they'd like me to review an evaluation that was done by
- 20 someone else.
- 21 Q Okay. I'm just -- do you know how South Carolina found
- 22 you down in Florida?
- 23 A I do. Dr. Rebecca Jackson, who runs our civil commitment
- 24 center in Florida, formerly worked for the South Carolina
- 25 treatment program, and she was aware that I was licensed in

Amy Swan - Cross by Respondent

102

1 South Carolina, and she gave me the person to contact and I
2 sent my qualifications in and they retained me.

3 Q Okay. So how many pre-commitment evaluations have you
4 given do you think?

5 A It was previously 26, but I just did two more. So I
6 think it's 28 now.

7 Q Okay. Is it safe to say that a majority of your pre-
8 commitment evaluations you recommend that the person be
9 committed?

10 A Yes.

11 Q When was the first time -- so you've had this contract
12 since 2013?

13 A Yes.

14 Q Did you recommend anybody -- on the commitment -- on the
15 evaluations you did in 2013 was everybody recommended for
16 commitment?

17 A I don't believe that I did pre-commitment evaluations in
18 2013. I don't think I did any until like 2014 or '15. I was
19 primarily doing annual reviews at that time.

20 Q The ones you conducted in 2014 did you recommend
21 commitment in all those cases?

22 A I don't know. I don't have it broken down by years.

23 Q I've had about 15 cases with you. Does that sound right?

24 A That sounds right.

25 Q And in all those cases you recommended commitment; is

Amy Swan - Cross by Respondent

103

1 that right?

2 A That's correct.

3 Q Okay. And you've also, I believe, Ms. Browder, you've
4 had some cases in which she was representing the Respondent;
5 is that correct?

6 A Right.

7 Q Was that the case that was Herman Archie?

8 A That's correct.

9 Q Now, you recommended commitment in that one?

10 A I did.

11 Q Was that also Anthony Tucker?

12 A Yes.

13 Q And you recommended commitment there?

14 A Yes.

15 Q Franklin Mosier?

16 A Yes.

17 Q Edward Willis?

18 A Yes. I'm not clear about Edward Willis.

19 Q All right. I'm just going -- okay.

20 A I don't know if I recommended him or not.

21 Q He had a static of seven, and you diagnosed him as having
22 biastophilia. Does that help trigger your memory?

23 A I just don't remember the specifics of that case.

24 Q How about Samerson Weston?

25 A Samerson Weston. Yes.

1 Q Okay. Have you ever in the State of South Carolina
2 testified on behalf of a Respondent in a pre-commitment
3 evaluation?

4 A Not in a pre-commitment evaluation.

5 Q Now, you can complete one of these evaluations without
6 the Respondent cooperating; is that correct?

7 A Yes. I can.

8 Q Let me just -- I should have asked this first. You don't
9 record any of your interviews; is that correct?

10 A I do not.

11 Q And why is that?

12 A I have never recorded these interviews. In Florida I
13 videotape them frequently, and I prefer that.

14 Q But is there any -- but you don't -- there's no reason
15 why you don't record them here?

16 A No reason. I have not received any information that I
17 could or couldn't.

18 Q Well, in your testimony you talked about an interchange
19 with my client, and I think you testified that he left in a
20 huff?

21 A Yes.

22 Q But there's no way for the jury to really see that
23 interview; is that correct?

24 A No. It wasn't videotaped.

25 Q So we have to rely on your testimony of those -- that

Amy Swan - Cross by Respondent

105

1 fact; is that correct?

2 A That's correct.

3 Q Now, you said that he consented to the interview; is that
4 correct?

5 A He did.

6 Q Now, what did you tell him about his rights there as far
7 as consenting to the interview?

8 A I have a notification form that we're required to use.

9 Let me see if I can find that. Okay. I have this form right
10 here. Would you like me to read it?

11 Q May I, may I look at it?

12 A Sure.

13 MR. FALK: May I approach?

14 THE COURT: Yes, sir.

15 BY MR. FALK:

16 Q Thank you. I just briefly looked at that, but in your
17 recollection is there anything on that form that tells him
18 what would happen if he wouldn't consent to the interview?

19 A No. I typically tell them that I can't force them to
20 answer any questions. So if there are questions that they
21 don't want to answer, you know, that's their right.

22 Q So was that his right to leave the interview?

23 A It is.

24 Q And he was in custody at the time of the interview; is
25 that correct?

- 1 A Yes. He was.
- 2 Q Where did you see him? Did you see him here or did you
- 3 see him at, I think it was at Allendale?
- 4 A Actually I saw him at the forensic evaluation service in
- 5 Columbia.
- 6 Q Ferrell Road?
- 7 A On Ferrell Road, yes.
- 8 Q Okay. And he had been transported from being in custody
- 9 prior to that? Is that your understanding?
- 10 A That is correct.
- 11 Q He was wearing a jumpsuit of some kind?
- 12 A Yes. He was.
- 13 Q Okay. Now, you made a diagnosis of him, and you base
- 14 your diagnosis on the DSM-5; is that correct?
- 15 A That is correct.
- 16 Q And what is the significance of the DSM-5? Is it the
- 17 Bible? I mean, I've heard that term.
- 18 A Yes. The DSM-5 is an 800-page book that basically lists
- 19 any mental disorder that you could have and what the criteria
- 20 are for diagnosing that disorder so that all professionals are
- 21 on the same page, and so if I say someone has bipolar
- 22 disorder, every other professional knows what I'm talking
- 23 about.
- 24 Q Excuse me. Let me see that. I'm sorry. I've lost my
- 25 page here. Just one moment, please. You were -- I was

Amy Swan - Cross by Respondent

107

1 actually sort of fumbling looking for the page while you were
2 giving your answer, but I mean, your point was so that
3 different forensic psychologists could be on the same page; is
4 that correct?

5 A That's exactly right.

6 Q So that they would know what you were talking about?

7 A Yes.

8 Q And it has -- it lists diagnostic criteria; is that
9 correct?

10 A It does.

11 Q And why does it do that?

12 A So that there's no doubt about what it takes to be
13 diagnosed with that disorder.

14 Q Is there a uniform agreement within your community or in
15 the, I guess, the psychological and probably psychiatric
16 community would all agree on the diagnostic criteria for each
17 particular disorder?

18 A That's correct.

19 Q And one of the diagnostic criteria for pedophilia is that
20 there's got to be over a period of at least six months this
21 pedophilic interest or urges; is that correct?

22 A That is correct.

23 Q Why does it have to be in the period over six months?

24 A Well, to rule out that it's just curiosity. It has to be
25 a pattern.

1 Q Okay. So if somebody -- so if somebody did not have --
2 if there was no evidence of fantasies or acts, pedophilic
3 fantasies or acts that occurred outside that six-month period,
4 did you diagnose them with pedophilic disorder?

5 A Not according to the DSM-5.

6 Q Okay. Now, you are -- and I believe your testimony you
7 said that you were relying quite heavily on the statement you
8 received from Ms. Gordon; is that correct?

9 A That is correct.

10 Q Because that statement regarding her interpretation of
11 what was happening that day that's what you said you needed to
12 get this period beyond the six-month period; is that correct?

13 A Right.

14 Q So if that did not happen, you would not have evidence of
15 pedophilic disorder; is that correct?

16 A I would not have sufficient evidence.

17 Q Okay. So you're relying pretty heavily on the accuracy
18 of what you saw; is that correct?

19 A That's correct, along with the fact that there were
20 multiple other allegations that he had abused children.

21 Q Again, those are allegations --

22 A Allegations.

23 Q Now, you're relying on the fact that Ms. Gordon said that
24 she saw him touch himself, but that he was doing it in a
25 sexual manner; is that correct?

Amy Swan - Cross by Respondent

109

1 A Yes. What she said is that he was jacking off in his
2 jumpsuit.

3 Q But you heard this testimony that his hands were
4 handcuffed in front of him; is that correct?

5 A That's correct.

6 Q Did she advise you of that?

7 A Yes. She did, but she told me that he was with his hands
8 together was masturbating.

9 Q Okay. Did you -- and that's your only basis for knowing
10 that that happened; is that correct?

11 A That's correct.

12 Q Did she tell you that, for example, the court -- well,
13 she was the court reporter, that none of the clerks or anybody
14 else mentioned anything about it?

15 A I didn't contact any of the clerks because she told me,
16 and I believed her.

17 Q So, now, you are relying on her testimony that it did, in
18 fact, happen?

19 A That is correct.

20 Q But you're also relying on her testimony as what was --
21 assuming that it did happen and assuming he wasn't scratching
22 himself or whatever, you're also relying on her testimony of
23 what was arousing him; is that correct?

24 A That's right. She said that they were discussing his
25 charges regarding the two little boys and that he was jacking

1 off in his jumpsuit.

2 Q Right. And that's -- but you do not know what he was
3 thinking about at that time; is that correct?

4 A I don't.

5 Q And you were, in fact, not in the courtroom. So you
6 don't know if there was something else that could have been
7 arousing him at that time; is that correct?

8 A That's correct. Typically there's not that much in a
9 courtroom that's sexually arousing.

10 Q Well, if he saw an age appropriate person, he'd been in
11 custody for a considerable period of time; is that correct?

12 A He had.

13 Q Again, you're making another assumption that there was
14 nothing else.

15 A That's correct.

16 Q In fact he could have been thinking of something else
17 that he had seen in his cell before being brought over here or
18 he could have been thinking about an interaction he could have
19 had with another inmate prior to his sentencing; is that
20 correct?

21 A He could, but since it's totally inappropriate to
22 masturbate in court, I strongly believe that he was
23 masturbating to what was being said about his victims in
24 court.

25 Q Well, let's assume he was masturbating, if he was not

Amy Swan - Cross by Respondent

111

1 aroused by pedophilic interests, that would not support your
2 diagnosis; is that correct?

3 A That's correct.

4 Q Now, he got a four on the static-99?

5 A That's correct.

6 Q And a lot of your testimony regarding the static-99
7 talked about the relative risk to reoffend. You compared his
8 risk to reoffend against other sex offenders; is that correct?

9 A That's correct.

10 Q But the static-99 also gives information on sort of
11 absolute recidivism rate; is that correct?

12 A It does, but when the October 16th, 2016, handbook came
13 out they recommended against using the absolute risk estimates
14 because they said that they were too unstable to be relied on.

15 Q Yet they are in the handbook that were published by
16 Hanson in 2016; is that correct?

17 A They are.

18 Q And did -- and R. Karl Hanson is sort of the man when it
19 comes to the static-99; is that correct?

20 A Well, it is, and Leslie Helmus is the one that did the
21 recent research as far as the new workbook and the re-norming
22 that occurred in 2009, and she was the one who I received
23 training in for the new coding rules, and she adamantly said,
24 "Do not use them unless you have to," and there's -- "because
25 they're too unstable."

1 Q But you are not going to dispute the fact that on page
2 ten of the -- well, excuse me. I pulled the wrong page.
3 You're not going to dispute, you would not dispute the fact
4 that on page eight of the evaluator's workbook, which was
5 apparently published on October 19th, 2016, that the recidivism
6 rate for somebody with a four ranges from 11 percent to 12.1
7 percent; is that correct?

8 A I would not dispute that. I would just say that the
9 absolute rates are unstable and cannot be relied on as much as
10 the percentile ranks in the relative risk.

11 Q Well, if the absolute rates are unreliable, how can the
12 comparative rates be any more reliable?

13 A Well, the static-99R does very well at grouping
14 individuals into categories such as percentile ranks and
15 relative risk. It is not as good at finding the -- assessing
16 the absolute risk that someone will be arrested or convicted
17 of another sexual crime.

18 Q Well, can you say with any degree of medical certainty
19 right now that there's a greater than 50 percent chance --
20 risk that he would recidivate?

21 A I have to rely on the percentile ranks and the relative
22 risk.

23 Q So can you say with any degree of medical certainty what,
24 what his absolute risk to reoffend would be?

25 A Well, that would be a prediction, and the static-99R does

Amy Swan - Cross by Respondent

113

1 not predict. It assesses risk, and I'll give you an example.

2 If the weatherman comes on the news at night and he says there

3 -- it will rain tomorrow, when tomorrow comes you will either

4 know if he was right or wrong. That's a prediction, but what

5 we do is assess risk, and an example of that would be the

6 weatherman coming on and saying there's a 60 percent chance of

7 rain. So he's not saying it will or will not happen. He's

8 saying what the chance of it happening is.

9 Q Well, if the weatherman says there's a ten percent chance
10 of rain do you cancel your plans for the picnic?

11 A No.

12 Q But you are giving an opinion. You're giving an opinion
13 here today that's saying he is likely to reoffend?

14 A Yes.

15 Q So that is a prediction; is that not right?

16 A No. It's my assessment of his risk, likely.

17 Q Okay. And so what does likely mean?

18 A Like --

19 Q More likely than not?

20 A No. More likely than not is a different -- a different
21 standard. Likely is -- has been defined by different states
22 as probably, and there's no numerical value that goes along
23 with likely.

24 Q So are you saying that a ten percent chance, likelihood
25 that if you think -- if you assess that there's a ten percent

1 chance he would reoffend that that's a likely chance that he
2 would reoffend?

3 A Well, it depends. In this case I didn't rely on the
4 absolute rates because they're unstable, and they don't
5 provide enough information at the current time, but with a
6 percentile rank of 79, the 79th percentile, and twice as likely
7 as the average sex offender to reoffend, yes, I said he was
8 likely.

9 Q But that is assuming that you know the likelihood that a
10 sex offender will reoffend; is it not?

11 A My job is to determine if it's likely based on all the
12 things that I evaluated in my report, and in the evaluation as
13 all the collateral data I determined that he was likely to
14 reoffend.

15 Q But let's go back to this comparison again. You're
16 saying he's twice as likely as the average sex offender to
17 reoffend; is that correct?

18 A That's correct.

19 Q 1.98 percent or somewhere in that range?

20 A That's correct.

21 Q Well, what if the average sex offender is likely -- has
22 an absolute risk to reoffend of five percent?

23 A Well, as I said, I don't rely on the absolute risk
24 because they're unstable.

25 Q But you are basing your opinion on the relative risk,

Amy Swan - Cross by Respondent

115

1 which has to still start with the absolute risk that a sex
2 offender is going to reoffend; is it not?

3 A Not necessarily. The average sex offender is in the 48th
4 percentile. Mr. Flowers is in the 79th percentile. So he has,
5 he has a great deal more risk than the average sex offender.

6 Q Okay. I think I'm beating a dead horse here. What I'm
7 trying to say is that you need to know -- you're saying
8 something is twice as likely it happened as something else; is
9 that correct?

10 A That's correct.

11 Q Okay. So if I buy a lottery ticket I've got a chance at
12 one in 300 million to win the lottery; is that correct?

13 A That's correct.

14 Q I buy two lottery tickets I'm twice as likely to win; is
15 that correct?

16 A Not necessarily.

17 Q You think one out of 300 and two out of 300 is not twice
18 as likely?

19 A Not necessarily. There's a, there's a statistical
20 calculation into the odds ratio of winning the lottery. I
21 have -- my statistics professor went through that, and it's
22 not translated to twice as much if you buy two tickets, but I
23 can't give you that calculation because that's way beyond me
24 statistically.

25 Q Okay. Is it still pretty unlikely I'm going to win the

1 lottery with two tickets.

2 A It's still pretty unlikely. Yes.

3 Q I believe part of your testimony you said that you sort
4 of supported -- you gave him the static-99 and he had a four.

5 A That -- yes.

6 Q And that creates an assessment that he's going to offend,
7 and then you talked about using some dynamic risk factors; is
8 that correct?

9 A That's correct.

10 Q And I believe your testimony was that there were three
11 dynamic risk factors that you, you considered here, and that
12 was -- one was lack of an emotionally serious relationship
13 that lasted over two years; is that correct?

14 A That's correct.

15 Q The second one was lifestyle impulsiveness; is that
16 correct?

17 A Yes.

18 Q And the third one was poor problem solving?

19 A That's correct.

20 Q Now, when I looked at your report you did not mention any
21 other dynamic risk factors; is that correct?

22 A That's correct, and I believe that he has other risk
23 factors, but because he did not participate in that part of
24 the evaluation I was not able to determine that those were
25 pertinent for him.

Amy Swan - Cross by Respondent

117

- 1 Q When you -- lifestyle impulsiveness, I'm looking at your
2 report, and you sort of listed some criteria of certain
3 evidence that you believe -- let me see -- correct -- evidence
4 that you believe show that he has a lifestyle -- he has an
5 impulsive lifestyle; is that correct?
- 6 A Yes.
- 7 Q And one was low self control?
- 8 A Yes.
- 9 Q Chronic instability in employment?
- 10 A Yes.
- 11 Q Lack of meaningful daily routines?
- 12 A Yes.
- 13 Q Irresponsible decisions?
- 14 A Yes.
- 15 Q Limited or unrealistic long-term goals?
- 16 A That's correct.
- 17 Q Are there any other ones that you thought were relevant?
- 18 A I don't believe so.
- 19 Q How old was he at the time that you gave this?
- 20 A He was, let's see, 26.
- 21 Q He -- when he went into prison he went in at 18; is that
22 correct or 19?
- 23 A That's correct. 19.
- 24 Q You also seem to place some reliance on the fact that he
25 had infractions while he was at SCDC; is that correct?

1 A Pardon?

2 Q In supporting your diagnosis and in supporting your --
3 let me just back up three steps here. Is it true that in
4 order for you to recommend that somebody meets the criteria of
5 a sexually violent predator that they have to have both a
6 mental disease or a personality defect.

7 A That's correct.

8 Q And that there also has to be a likelihood that he would
9 reoffend; is that right?

10 A That is correct.

11 Q Because you could have a mental disease or personality
12 defect and have no likelihood -- and, and, and still possibly
13 not have a likelihood to reoffend; is that correct?

14 A That is correct.

15 Q You need both pieces?

16 A That is correct.

17 Q And certainly the current state of psychological thinking
18 does not -- would not say that homosexuality is a mental
19 disease or personality defect; is that correct?

20 A It is not.

21 Q Okay. All right. So now, going back, when you're
22 talking about his static-99 and the likelihood that he would
23 reoffend, you discussed his dynamic risk factors.

24 A That's correct.

25 Q And it was my understanding that you also considered the

Amy Swan - Cross by Respondent

119

- 1 fact that he had SCDC infractions; is that correct?
- 2 A That is correct.
- 3 Q And why did you feel that they were important?
- 4 A Well, that demonstrates a resistance to rules and
- 5 supervision.
- 6 Q Okay. Did you look at what the -- what the specifics are
- 7 of any of those infractions?
- 8 A I did.
- 9 Q Well, for example, he got one, and I looked at the same
- 10 SCDC sort of coversheet that you did, and it talked about
- 11 trafficking and trading; is that correct?
- 12 A That's correct.
- 13 Q Now, you know that that had nothing to do with drugs or
- 14 contraband, certainly with drugs; is that correct?
- 15 A That's correct.
- 16 Q Because -- do you know what the facts were in that
- 17 situation?
- 18 A I don't remember, but I can find it.
- 19 Q That, that he traded three bars of soap?
- 20 A Right.
- 21 Q He got three bars of soap and he gave somebody his boots?
- 22 A Yes.
- 23 Q Okay. And there was really two instances of sort of
- 24 assaultive conduct; is that correct?
- 25 A That's correct.

Amy Swan - Cross by Respondent

120

1 Q He had one where he got into a fight with another inmate.

2 A That's correct.

3 Q And he got into another one when he threw a coffee cup
4 and his ID badge at one of the guards?

5 A That is correct.

6 Q So he did not strike the guard with his fist or kick the
7 guard; is that correct?

8 A That's correct, but a coffee --

9 Q And still it was certainly disrespectful --

10 MR. BOGLE: Objection. She was trying to finish her
11 answer.

12 A A coffee cup could cause significant damage. So it shows
13 a defiant attitude toward authority.

14 Q So it's your assumption that it was a paper coffee cup?

15 A Pardon?

16 Q Was it your assumption that it's a paper coffee cup?

17 A No.

18 Q And he interfered with the count on seven occasions; is
19 that correct?

20 A That's correct.

21 Q And most of those were the fact that he was asleep during
22 the morning count?

23 A That is correct.

24 Q And he was in his bed during the evening count?

25 A That is correct.

Amy Swan - Redirect by State

121

1 Q One of the other infractions was he just didn't have his
2 ID on his person at the time?

3 A That is correct.

4 Q And did it look from reading the report that possibly his
5 cellmate had taken his ID?

6 A Yes. It did.

7 Q Do you think that -- I'll withdraw that question.

8 MR. FALK: One moment, please. I have no further
9 questions at this time.

10 THE COURT: Mr. Bogle.

11 MR. BOGLE: Thank you, Your Honor. May it please the
12 Court?

13 REDIRECT EXAMINATION

14 BY MR. BOGLE:

15 Q Dr. Swan, you mentioned at the beginning of the cross
16 examination you talked about how you became known to the
17 department of mental health so they could develop a contract
18 with you.

19 A That is correct.

20 Q And you testified about annual reviews. Was that what
21 you initially did for them was annual reviews?

22 A That is correct.

23 Q Because they were behind; weren't they?

24 A They were behind. They had a backlog.

25 Q And these are annual reviews for guys already committed

1 to the sexually violent treatment program; right?

2 A That's correct. Every year they get the opportunity to
3 be evaluated to see if they're ready for release, and that's
4 what I was doing.

5 Q Okay. Now, and when you interviewed Ms. Gordon, the
6 court reporter, about the guilty plea, you saw her testimony
7 yesterday; did you not?

8 A Yes.

9 Q And the way she described the lineup was the Defendant,
10 Mr. Flowers, would have been standing about where I am right
11 now?

12 A Yes.

13 Q With his attorneys next to him, and then the prosecutor
14 over this way standing next to him?

15 A That's correct.

16 Q And then in front, directly in front of Mr. Flowers would
17 have been Ms. Gordon?

18 A That's correct.

19 Q So she had a direct line of what he was doing?

20 A Yes.

21 Q Okay. Counsel referred to something called the DSM-5.
22 What's the full name of that?

23 A That is the Diagnostic and Statistical Manual the Fifth
24 Edition.

25 Q Okay. And we call it DSM-5 for short?

Amy Swan - Redirect by State

123

1 A That's right.

2 Q All right. Now, talk about the static-99R and the
3 directions about using it in the handbook, is it supposed to
4 be the only thing you use?

5 A No. It is one piece of a comprehensive evaluation, and
6 Karl Hanson specifically says in the coding rules that it does
7 not -- it does not consider all factors that are relevant to
8 an individual's risk. Therefore, a prudent evaluator will
9 consider other factors that are relevant to risk.

10 Q And so for that that's one of the reasons you went into
11 or looked for dynamic risk factors, as well as the
12 unchangeable things about his life that the static measures;
13 is that correct?

14 A That is correct.

15 Q Now, counsel talked about 11 percent chance and 12
16 percent chance. If the FAA told you the plane you're flying
17 back to Florida in tomorrow or tonight had a ten percent
18 chance of crashing, would you get on the plane?

19 A No. I would not.

20 Q So this percentage, does it have a lot to do with the
21 type of risk involved?

22 A It does.

23 Q Also, there's talk about pedophiles and pedophiles
24 offending, is it true that you can be a pedophile and not act
25 out on it criminally?

- 1 A Yes.
- 2 Q Okay.
- 3 A There are -- in fact, there are organizations of people
4 who are sexually interested in little boys and girls who never
5 act on it, and they would be diagnosed with pedophilia. It's
6 only if you've acted on it or gotten in trouble because of
7 that sexual interest that you would be diagnosed with
8 pedophilic disorder.
- 9 Q Okay. So acting out on it like what happened here?
- 10 A Yes.
- 11 Q The two boys in -- one in North Carolina, one in South
12 Carolina.
- 13 A Yes.
- 14 Q And then the other allegation that you were made aware
15 of?
- 16 A Yes.
- 17 Q And then couple that with the incident that happened here
18 in court back in 2010?
- 19 A That is correct.
- 20 Q There was a lot of talk, also, about the violations while
21 he was in prison. Now, prisons have very strict rules; don't
22 they?
- 23 A They do.
- 24 Q And some of the things that you might get called out for
25 in prison would make no sense to an outsider like trading bars

Amy Swan - Redirect by State

125

1 of soap for boots or something.

2 A That is correct.

3 Q Why is it prisons have such strict rules about things
4 that might not seem that big a deal to us on the outside?

5 MR. FALK: Objection, Your Honor. I'm not sure if it's
6 -- calling for an opinion that she has not been qualified as
7 an expert on.

8 Q Have you worked with offenders who have been confined?

9 A Yes. I have.

10 Q Have you visited them in prison on many occasions?

11 A Many occasions.

12 Q Have you had to review prison reports over the last 19
13 years of people in prison who have been convicted there of
14 offending against the rules?

15 A Yes.

16 Q Why is it that prisons have rules that might seem
17 nonsensical to us on the outside?

18 MR. FALK: Objection, Your Honor. Again, I think he's
19 asking for an opinion on criminal -- whatever prison expert,
20 teaser, criminology or whatever it would be, but certainly not
21 a forensic --

22 MR. BOGLE: I think she can testify as to her
23 observations based upon her experience interviewing countless
24 inmates over the years and visiting prisons.

25 THE COURT: All right. Overrule the objection. Go ahead

1 and answer it.

2 A Okay. Prisons have rules that don't make sense to us on
3 the outside because there are predatory inmates in prison who
4 exploit the weaker individuals, and for example, bars --
5 trading bars of soap could be in exchange for sexual favors or
6 some other type of behavior that they do not permit in prison,
7 and so while it doesn't seem like it makes a lot of sense, in
8 the prison culture it does.

9 Q Okay. Now, there was talk -- let's talk about likely.
10 Let me ask you a question, and I think I asked you before, but
11 does the mental abnormality he has, Mr. Flowers has, does this
12 -- does he have a propensity to commit acts of sexual violence
13 which is of such a degree it poses a menace to the health and
14 safety of others so that he is dangerous to others?

15 A Absolutely.

16 Q Now, is what I just read the definition of likely to
17 engage in sexual violence as set forth in our statute?

18 A Yes. It is.

19 Q Thank you.

20 MR. BOGLE: No further questions.

21 MR. FALK: Mr. Falk.

22 RECROSS EXAMINATION

23 BY MR. FALK:

24 Q Mr. Bogle asked you about annual reviews.

25 A Yes.

Amy Swan - Recross by Respondent

127

1 Q And you did several of those for the department of mental
2 health?

3 A Yes. A number of them.

4 Q How many?

5 A Since 2013 probably 300, 350.

6 Q For South Carolina or just --

7 A For South Carolina.

8 Q How long had the -- do you have any kind of sense an
9 approximation or a guesstimate as to how long those people
10 were in, in the program that were getting -- I mean, were
11 these people getting after a year?

12 A No. These are people who had been there at least one
13 year, some of them had been there 10 years. It just depended
14 on each case, but --

15 Q You did 330 annual reviews.

16 A I did.

17 Q Did any -- did you recommend anybody's release after one
18 year?

19 A Not after one year, no.

20 Q After two years?

21 A I don't believe so.

22 Q Because I believe in your direct testimony you said that
23 it takes a long time for this treatment; is that correct?

24 A It does.

25 Q Do you have an estimate?

1 A I don't know. It depends on how the individual applies
2 themselves during the treatment. There are some guys that are
3 really committed and really work hard, and then there are
4 other guys that essentially do nothing, and obviously, they're
5 -- nothing has changed for them. Their risk would not be
6 lessened.

7 Q I mean, you did 330 annual reviews. Do you have any kind
8 of sense of how long to expect somebody to be there?

9 A I don't. The treatment program that is there now is --
10 it's intended to be completed in approximately five years.
11 The treatment program that was before the current one it was
12 really hard to tell because each plan was individualized. So
13 there was no standard completion time.

14 Q No further questions.

15 REDIRECT EXAMINATION

16 BY MR. BOGLE:

17 Q So basically it's all going to depend on the person?

18 A Yes.

19 Q And how he approaches it as to how quickly they might be
20 eligible to get out.

21 A That is correct.

22 Q Thank you.

23 THE COURT: Anything else?

24 MR. FALK: Very brief redirect, Your Honor.

25 THE COURT: Thank you.

Motions

129

1 A Thank you.

2 MR. BOGLE: Your Honor, we would ask that Dr. Swan be
3 excused at this time. She's got to get back to the other work
4 that she does for us and for Florida.

5 MR. FALK: No objection.

6 THE COURT: The witness is excused. Thank you, Doctor.

7 MR. BOGLE: Thank you. Thank you, Your Honor. At this
8 time the State would rest.

9 THE COURT: Ladies and gentlemen of the jury, if you'd
10 all step back to your room I have to take up a matter of law
11 at this time.

12 (Whereupon, the following takes place outside the
13 presence of the jury.)

14 THE COURT: Anything for the record?

15 MR. FALK: Yes, Your Honor. At this time we would move
16 for a directed verdict. In this case I think the testimony
17 from the State's expert, by her own admission, is highly
18 speculative because she -- it's, it's my understanding of her
19 testimony that she needs to show acts of pedophilic interest
20 occurring over a six-month period of time, and it was her
21 testimony that she's sort of relying on, on the, on the
22 observations of Ms. Gordon as to an event that occurred
23 outside this eight-month period of time. She, she testified
24 that she had no knowledge of what he was being aroused to at
25 that time, and she also testified to the fact that just if he

Motions

130

1 were playing pocket pool and being motivated by something
2 else, that would not support her diagnosis. So she is relying
3 on what Dr. -- what the court reporter saw, which may or may
4 not have happened, and then she is now just guessing as to
5 what his motivation was for that, and she admits that, that
6 she has no basis for that other than what Ms. Gordon said that
7 what was going on in the courtroom at the time. So I -- Your
8 Honor, I believe this testimony is way too speculative in
9 order for this case to go to the jury.

10 MR. BOGLE: Your Honor, we would submit that the State
11 has established the existence of the elements of the crime
12 sufficient for it to go to the jury. We've got the sexually
13 violent conviction, criminal sexual conduct in the second
14 degree. We have the diagnosis of the pedophilic disorder
15 which, again, had a lot to do with Ms. Gordon's testimony, but
16 Ms. Gordon's testimony is what it was. She was right there.
17 She has no, no dog in the fight, doesn't have a, a plus or a
18 minus in the case. She's just watching what she sees. She
19 sees him getting aroused as the Solicitor during that guilty
20 plea explained what had happened involving the sexual activity
21 of a young minor, a young boy. So she makes a diagnosis.
22 The next thing is likely to reoffend. She's established a
23 basis for that based on static or unchangeable factors about
24 Mr. Flowers' life, as well as the dynamic or changeable
25 factors that also exist. So if you've got -- combine

Joshua Flowers - Direct by Respondent

131

1 everything together, we would submit there's sufficient
2 evidence in the case to withstand a directed verdict using the
3 proper standard at this time.

4 THE COURT: Based on the evidence before the Court I'm
5 going to leave it to the jury. So the motion is denied.

6 All right. Let's take about ten minutes because I know
7 they'll need a little break back there.

8 OFF THE RECORD

9 (On the record. The following takes place outside the
10 presence of the jury.)

11 THE COURT: You ready?

12 MR. FALK: Yes, Your Honor.

13 (Whereupon, the following takes place in the presence of
14 the jury.)

15 THE COURT: All right.

16 MR. FALK: We'd call Joshua Flowers to the stand.

17 THE COURT: Come around and be sworn, please.

18, WHEREUPON, Joshua Flowers is called to the stand, duly
19 sworn by the Court and testified as follows:

20 THE COURT: Thank you. If you'll have a seat.

21 DIRECT EXAMINATION

22 BY MR. FALK:

23 Q Would you please state your name?

24 A Joshua Flowers.

25 Q Can you speak up a little bit?

- 1 A Joshua Flowers.
- 2 Q Thank you. And how old are you today?
- 3 A 27.
- 4 Q 27?
- 5 A Yes, sir.
- 6 Q Okay. How old were you when you went to prison?
- 7 A When I -- the first time I went in North Carolina I was,
- 8 I was 19. When I came here I was 20.
- 9 Q Okay. When you came here, how long were you in custody
- 10 before you pled in North Carolina? Were you in custody prior
- 11 to going to prison in North Carolina? Were you in?
- 12 A Yes, sir.
- 13 Q How long, how long was that?
- 14 A I was in the county jail for eight months.
- 15 Q Eight months?
- 16 A Yes, sir.
- 17 Q And then were you in the detention center here prior to
- 18 going to --
- 19 A Yes, sir. Four months.
- 20 Q How long? Four months?
- 21 A Yes, sir.
- 22 Q And you have served out your prison sentence; is that
- 23 correct?
- 24 A Correct.
- 25 Q And how long were you in prison?

Joshua Flowers - Direct by Respondent

133

1 A I did roughly six years and ten months.

2 Q And then when you got released you've been in the Dillon
3 County Detention Center?

4 A Yes, sir.

5 Q So you have been confined for -- since you've been 19?

6 A Yes, sir.

7 Q Okay. Well, did you -- did you have any opportunities
8 for any types of classes while you were in prison?

9 A Yes, sir. I did. Actually when I was in North Carolina
10 I got certified in horticulture and I was also taking -- when
11 I came to South Carolina I had been taking auto body, brick
12 masonry, along with HVAC.

13 Q HVAC, H-V-A-C?

14 A Yes, sir.

15 Q What kind of, what kind of education did you have prior
16 to going to prison?

17 A I completed the tenth grade.

18 Q You completed the tenth grade?

19 A Yes, sir.

20 Q You've got to speak up a little bit if you could. And
21 what kind of jobs did you have prior to that?

22 A I worked for Murphy-Brown in Laurinburg, North Carolina,
23 which is a hog, a hog company.

24 Q A hog farm?

25 A Yes, sir.

- 1 Q Okay. So if you got out what are your plans for work?
- 2 A My brother currently owns a gym in Laurinburg, and he
- 3 told me that I could, I could get a job working with him, but
- 4 my main, my main objective is -- my main goal is to go back to
- 5 school and to fulfill my childhood dream of culinary arts.
- 6 Q Culinary arts?
- 7 A Yes, sir.
- 8 Q And what -- where will you go for school for that?
- 9 A I'm going to have to go -- I'll probably have to go to a
- 10 technical college for a while until I can get my grades good
- 11 enough to -- I really want to go to Johnson and Wales.
- 12 Q That's in Charlotte?
- 13 A Yes, sir.
- 14 Q Do you have your GED?
- 15 A Yes, sir. I do.
- 16 Q Where did you complete that?
- 17 A I completed that in North Carolina in --
- 18 Q While you were in custody?
- 19 A Yes, sir.
- 20 Q Now, there's been some mention of Jason. Can you tell me
- 21 who Jason is?
- 22 A That's my husband.
- 23 Q And what -- can you tell me a little bit about that? How
- 24 long have you known him?
- 25 A I've known him for quite some time. We, we were friends

Joshua Flowers - Direct by Respondent

135

1 prior to me being in incarcerated, but we -- once I, once I
2 got locked up, you know, we kind of started kindling our, our
3 acquaintance, and we just went from there.

4 Q Okay. And where does he live?

5 A He currently lives in Converse, Texas.

6 Q So is your plan to eventually go to Texas?

7 A Yes, sir.

8 Q Now, you pled guilty to these charges; is that correct?

9 A Yes, sir.

10 Q Why did you plead guilty?

11 A The main reason was because of the time that I was
12 facing.

13 Q How much time were you facing?

14 A Here in South Carolina I was facing about 60 years.

15 Q That's assuming that if you had criminal sexual conduct
16 with a minor you could have gotten 30 years for that?

17 A Yes, sir.

18 Q And you could have gotten 30 years for the kidnapping
19 charge?

20 A Kidnapping. Yes, sir.

21 Q And so you pled guilty to a lesser offense; is that
22 correct?

23 A Yes, sir.

24 Q Now, I'm sure -- I would anticipate that Mr. Bogle is
25 going to ask you that when you pled guilty the judge probably

1 asked you whether or not you committed those offenses and you
2 raised your hand and said that you did; is that correct?

3 A Yes, sir.

4 Q But you didn't really do that; is that correct?

5 A Yes, sir.

6 Q And so you're here today -- and again, so then why if you
7 didn't do it why did you plead guilty to those offenses?

8 A Because I was facing 60 years.

9 Q And you got an eight-year sentence?

10 A Yes, sir. I got a suspended sentence.

11 Q Okay. So have you given any thought over the last eight
12 years as to the effects that your actions have had on the two
13 little boys in this case?

14 A Yes, sir. I have.

15 Q What, what, what do you think? Do you have an
16 appreciation for how that -- what -- how do you think your
17 actions have effected them?

18 A It's, it's terrified them. You know, I, I can only
19 imagine what they're, what they're going through. You know,
20 I've heard that they can't sleep and, you know, they don't
21 want to be separated from their parents, you know, and, and --

22 Q So what were you thinking about at the time when you did
23 it?

24 A Honestly, I don't, I don't know.

25 Q What's that?

Joshua Flowers - Direct by Respondent

137

1 A Honestly, I don't know.

2 Q How old were you?

3 A I was 18.

4 Q Now, Jason, were you, were you and Jason sort of together
5 prior to that time?

6 A We were friends.

7 Q Okay. Were you intimate friends?

8 A Not really, no.

9 Q So when did you realize that you were homosexual?

10 A Prior to the, prior to the incident I was still kind of
11 trying to find myself, and you know, now I'm, I'm comfortable
12 enough to say that, you know, that's, that's what I am.

13 Q How has the eight years that you've spent or since you
14 were 18 how, how has that affected you? Are you the same
15 person? Are you a different person?

16 A By no means. I can honestly say that prison's changed
17 me, and it's helped me become a better person, you know, along
18 with me taking the vocation classes. I also took -- I was
19 also in AA, NA and here in South Carolina. When I was in
20 North Carolina I actually was taking some sexual predator
21 classes through mental health.

22 Q You'd, you'd mentioned NA and AA.

23 A Yes, sir.

24 Q Because at one time you got caught with a jug of homemade
25 wine while you were in custody?

- 1 A Yes, sir.
- 2 Q Are you still an alcoholic?
- 3 A I can honestly say no.
- 4 Q Do you -- what have you gotten out of the AA and NA
- 5 meetings?
- 6 A That, you know, recovery is possible. You know, it, it
- 7 is, it is a disease, but it's something that can be cured
- 8 through time.
- 9 Q Were you drinking a lot prior to going to prison?
- 10 A Yes, sir. I was.
- 11 Q How long? How often?
- 12 A Every day.
- 13 Q Anything else other than alcohol?
- 14 A Marijuana and pills.
- 15 Q What kind of pills?
- 16 A Adderall.
- 17 Q When was the last time you had marijuana?
- 18 A When I got -- before I got locked up.
- 19 Q And the pills?
- 20 A Before I got locked up.
- 21 Q So the only thing that you've got was some booze when you
- 22 were in prison?
- 23 A Yeah. Yes, sir.
- 24 Q So what other kind -- have you -- did they ever offer you
- 25 any sex offender treatment for the eight years that you were

Joshua Flowers - Direct by Respondent

139

1 in?

2 A There was, there was a class, but that class wasn't
3 offered to me until I got to Allendale, which is a, which is a
4 character yard, and by the time that I got -- by the time I
5 got to the yard they had already started the class. So I had
6 to wait until the class was over with to go back and do it
7 again, and I got shipped off the yard before that.

8 Q Were you in the character dorm at Allendale?

9 A Yes, sir.

10 Q And what is the character dorm?

11 A Well, actually, the -- pretty much the whole yard is a
12 character -- is character dorms, but we had, we had a dorm for
13 GED. We had -- the dorm that I was in was for cats and dogs.

14 Q Was what?

15 A Is, is for cats and dogs.

16 Q What does that mean? Does that mean pets?

17 A We, we had pets in our, in our room. If we was on the
18 cat side we, we took care of a cat. We rehabilitated the cat
19 to make him adoptable after they went back to the shelter, and
20 I was on the cat -- I was -- I had one dog and probably about
21 ten cats that I took care of the whole, throughout the whole
22 time I was there.

23 Q What would happen if you violated something? Could you
24 get thrown out of the character dorm?

25 A Yes, sir.

1 Q Who's responsible for keeping the character dorm clean?

2 A We are.

3 Q Is -- where had you come from before being at Allendale?

4 A I was at Kershaw.

5 Q If you -- what's -- what was an easier place to be,
6 Kershaw or Allendale?

7 A Allendale.

8 Q And why is that?

9 A The environment was different. I felt like there was
10 more I can get out of Allendale, which is the whole reason why
11 I signed up for Allen, the program yard, and I stayed there a
12 little over a year.

13 Q And you said people were different?

14 A Yes, sir. The, the whole environment.

15 Q Okay. Some specifics, is it safer or is it --

16 A Yeah. There, there wasn't much violence going on there.

17 Q Let me just ask you briefly, what was going on with the
18 three bars of soap trading for the pair of boots?

19 A The dude came to me and said, said that he needed a new
20 pair of boots, and he said that he would give me three bars of
21 soap for it. So I signed up for the commissary to get the
22 boots, and when I got, when I got back to the dorm to give him
23 the boots and he placed the three bars of soap in my hand, the
24 lieutenant saw, the lieutenant saw the transaction going on
25 and she stopped us.

Joshua Flowers - Direct by Respondent

141

1 Q Why did you need three bars of soap?

2 A Because I didn't have any soap at the time.

3 Q Then did you use those -- trade those for something else?

4 A No, sir. I never got them. They -- the LT took them
5 from us.

6 Q What was the problem on the seven times that you were in
7 bed when there was a count?

8 A I get up, I get up early in the morning or I got up early
9 in the morning when I was at Tyger River for auto body. So by
10 the time I got back to the dorm I was super tired because I
11 would leave, I would leave the, the dorm at like six o'clock
12 in the morning and I won't get back till like 3:30, four
13 o'clock, and so like the whole time -- and the, the whole
14 class was hands on. So I stayed busy.

15 Q So what did you learn at the auto body?

16 A I learned it's a good job, you know. If I had a chance
17 that's something I would, I would look into as a job.

18 Q Is that another trade that you think you have now?

19 A Yes, sir.

20 Q How long were you there?

21 A For about, about six months.

22 Q Other than culinary school, where do you plan to live
23 when you're released?

24 A In Texas.

25 Q And you'll be with Jason?

Joshua Flowers - Cross by State

142

1 A Yes, sir.

2 Q I have no further questions. Please answer any questions
3 Mr. Bogle may have.

4 THE COURT: Your witness, Mr. Bogle.

5 MR. BOGLE: Thank you, Your Honor. May it please the
6 Court? If I may approach the witness, Your Honor?

7 THE COURT: Yes, sir.

8 CROSS EXAMINATION

9 BY MR. BOGLE:

10 Q Mr. Flowers, just to be clear of some things. I'm
11 handing you a copy of the bill of information from Scotland
12 County, North Carolina, and this would be when you pleaded
13 guilty to the taking indecent liberties with a child up there.
14 Do you remember that?

15 A Yes, sir.

16 Q Okay. And this was in, it looks like September 19th of
17 '09; is that what that looks like to you?

18 A 17th.

19 Q 17th of '09. You're right. It's a seven, and that's your
20 signature right there?

21 A Yes, sir.

22 Q Okay. So this involved the child named Minor 2 ; correct?

23 A Yes, sir.

24 Q And it says lewd and lascivious act upon the body of

25 Minor 2 and that's what you were convicted of; is that right?

Joshua Flowers - Cross by State

143

1 A Yes, sir.

2 Q Is this a copy of what you signed?

3 A Yes, sir.

4 Q Okay. Is this the document that led to your guilty plea?

5 A Yes, sir.

6 Q Okay.

7 MR. BOGLE: Move to introduce into evidence as Exhibit
8 Number Two for the State, Your Honor.

9 MR. FALK: Let me look at this. I have no objection.

10 THE COURT: In without objection.

11 MR. BOGLE: And with the Court's permission, we've
12 redacted the name, the last name of the victim. So we'll
13 photocopy this, and the photocopy will be the one that she'll
14 mark. Is that okay?

15 THE COURT: No problem.

16 (State's Exhibit Number Two [Bill of Information]
17 introduced into evidence and appropriately marked.)

18 BY MR. BOGLE:

19 Q Now, you mentioned the fact that you're -- you've been
20 sitting in the local detention center awaiting this trial;
21 correct?

22 A Yes, sir.

23 Q And this trial was set on two prior occasions back in
24 July and September and got continued for various reasons. You
25 knew about that from talking to your lawyer; right?

1 A Yes, sir.

2 Q Okay. The Jason that you talked about a minute ago, is
3 he your -- are you married to him?

4 A Yes, sir.

5 Q You said you're married to him. When did the marriage
6 take place?

7 A It took place last year.

8 Q Okay. So it took place while you were at the Department
9 of Corrections or here at the local jail?

10 A While I was in prison.

11 Q Okay. Was Jason at the time an inmate at the prison?

12 A No, sir. He wasn't.

13 Q Okay. Are you -- you understand that according to the
14 Department of Corrections' rules and regulations inmates
15 cannot get married neither to a woman or a man. You
16 understand that?

17 A Yes, sir.

18 Q And that your records from the Department of Corrections
19 no -- show no records of a, a spouse, a wife or a husband or a
20 next of kin other than your parents; right?

21 A That's not true.

22 Q So you're saying that in these records I'm going to find
23 Jason's name as your husband?

24 A I had -- I -- there was a, a copy of my marriage
25 certificate in my files.

Joshua Flowers - Cross by State

145

1 Q Okay. Well, let me ask you this. Now, during the guilty
2 plea which happened back in 2010, to the charges here, and
3 these are the criminal sexual conduct in the second degree,
4 the crimes upon the boy named Minor 1, so during that plea, of
5 course, the judge had to ask you a number of questions to make
6 sure you were pleading guilty freely and voluntarily; correct?

7 A Yes, sir.

8 Q And that included whether or not you were satisfied with
9 the services of your attorney and had you had enough time to
10 talk with your attorney; right?

11 A Yes, sir.

12 Q And then he turned to the Prosecutor and the Prosecutor
13 read what the facts were, what it, what it was you had done to
14 Minor 1 that made it a crime.

15 A Yes, sir.

16 Q And then you were sentenced by the Court?

17 A Yes, sir.

18 Q The Judge would have turned to you and said, "Is that
19 what happened," and you had to acknowledge that, "Yeah.
20 That's what happened"; right?

21 A Yes, sir.

22 Q Okay. So what I'm getting at is you pleaded guilty to
23 this crime because you were guilty of it; correct?

24 A Yes, sir.

25 Q You'd done these things to Minor 1 and it's against the law;

1 right?

2 A Yes, sir.

3 Q You mentioned horticultural classes. Was that at the
4 North Carolina prison?

5 A Yes, sir. It was.

6 Q And auto body classes at the South Carolina prison and
7 was there another class at the South Carolina Department of
8 Corrections that I missed or was it just the auto body stuff?

9 A Auto body, brick masonry and HVAC.

10 Q That's right. HVAC, HVAC, I'm sorry, but not sex
11 offender treatment of any kind?

12 A No, sir.

13 Q Okay. And the boys that were the victims of your crimes
14 had to do with you working in the church up in North Carolina;
15 right?

16 A Yes, sir.

17 Q Because you were working at whatever part of that church
18 deals with small children; correct?

19 A Yes, sir.

20 Q And you purposely got involved in that kind of work to
21 have access to small children; right?

22 A No.

23 Q No?

24 MR. BOGLE: That's all, Judge. Thank you.

25 MR. FALK: No redirect.

Motions

147

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

2 MR. FALK: We have no further witnesses. We would rest.

3 MR. BOGLE: Nothing in reply, Your Honor.

4 THE COURT: Ready to move on to arguments?

5 MR. BOGLE: Yes, sir.

6 MR. FALK: Yes, Your Honor. Other than that, I'll renew
7 my motion.

8 THE COURT: Yes. The same, the same.

9 MR. FALK: Under the same grounds.

10 THE COURT: Same grounds, same ruling.

11 MR. BOGLE: May it please the Court, then?

12 THE COURT: Yes, sir.

13 MR. BOGLE: Thank you, Your Honor.

14 THE COURT: Would you like the podium moved? Okay.

15 MR. BOGLE: No. I can -- I'll wing it.

16 May it please the Court, Mr. Falk.

17 Okay. Like the Judge explained yesterday we've reached

18 the point now where all the testimony is in and all the

19 exhibits are in. We've got two exhibits involved in the

20 crimes the man was convicted of, and you've heard all the

21 testimony you're going to hear as far as witnesses for the

22 State and for the Defense. So now we attorneys get up. We

23 argue our case to you, explain what we think is the good

24 sides, the bad sides about each other's case, and once this is

25 over the Judge will explain the law to you and you apply that

Closing Argument by State

148

1 law to the facts you've heard from this witness stand and the
2 evidence you get to see when you go back in the jury room.
3 I'd like to first thank you for doing this. We all have
4 places we'd much rather be today, and the weather is still
5 pretty nice outside, but this is your duty to the State of
6 South Carolina, to Dillon County, and we appreciate what
7 you're doing, taking the time from your private lives to be
8 here and make an important decision not just for the State but
9 also for Mr. Flowers. Whichever way it goes this has a lot to
10 do with his life.

11 Now, every case has a theme, and this case had a theme to
12 me, and the theme that I got out of listening to what happened
13 yesterday and reading Dr. Swan's report is nothing has
14 changed. Okay. What Mr. Flowers was that made him commit these
15 crimes against these boys, nothing has changed since then, no
16 sex offender treatment, no kind of treatment or job training
17 that would intervene and change his way of thinking to where
18 he wouldn't do those crimes again. Nothing has intervened.
19 Everything is still the same, and that's sad. It's too bad
20 there wasn't some kind of sex offender treatment that he would
21 seek out and enroll in while in prison, but he didn't. They
22 offer it, but he didn't do it, for whatever reason.

23 Now, remember what we have to prove. Number one, has he
24 been convicted of a sexually violent crime. In South Carolina
25 he has. You'll have both of these, but in South Carolina he

Closing Argument by State

149

1 has. Criminal sexual conduct in the second degree is a
2 sexually violent crime. It's one of the 16 ones listed in the
3 statute.

4 The next thing is does he have a mental abnormality? He
5 does. He's a pedophile, pedophilic disorder. He's sexually
6 attracted to boys, because that's the kind of victims he's
7 had, and it's non-exclusive. Apparently he's also sexually
8 attracted to age appropriate people like Minor 2 or something
9 like that. So it's a pedophile. That's what he is.
10 Pedophilic disorder is the technical name for it. He's got
11 that.

12 The next thing is does this make him likely to engage in
13 acts of sexual violence if not confined for treatment. In
14 other words, is this something he can control, and we have to
15 look at all the evidence and figure out what happened here.
16 First off, look at his victims, boys ages, in ages seven and a
17 half to eight year old range. One of them had mental or ADHD
18 issues that made him more like a five year old and that had
19 difficulty in making speech and talking, which made him,
20 frankly, a good victim to pick because he's going to be hard
21 to understand when law enforcement looks into it.

22 The North Carolina crime is indecent liberties with a
23 child. You'll see that when you go back to the jury room. Is
24 there predatory conduct here, and I would submit to you there
25 is. First off, of all the things he could have done at that

1 church he picks the one job that has to do with small
2 children. The next thing we have the camping trips, which his
3 own mother tells the police, "I don't think he should go with
4 those boys, but you know, he's 18. I can't stop him." He
5 chose his victims. The boy in North Carolina with the speech
6 impediment who would be hard to understand, developing a
7 friendship with ^{Minor 1}'s brothers, ^{Minor 1} the South Carolina
8 victim, and he would call his brothers and make the phone
9 calls to them as a way to get to and talk to ^{Minor 1}. Also we
10 have, and to me this is one of the scariest things about this
11 is that he would commit the crime in North Carolina against
12 **Minor 2** while **Minor 2**'s mother is just a few doors away doing a
13 painting job at the church. That really -- it's one thing to
14 take a victim off to a private place and commit the crime, but
15 to do it in basically a public place where you can be easily
16 discovered or easily caught, mom could have stopped painting
17 and walked in the room at any minute and caught him, to take
18 that kind of risk, take that kind of chance on being caught
19 committing an illegal act to me suggests a lack of control.
20 The urge is so strong you're willing to do it even though it's
21 in a situation could get caught so easily.

22 And finally we have the conduct he did in court. Now,
23 Hattie Gordon has been a court reporter for many years in
24 South Carolina. She sits right here, and back in 2010 she was
25 sitting right there taking down Mr. Flowers' guilty plea, and

Closing Argument by State

151

1 during that guilty plea apparently he was, for lack of a
2 better word, with his hands jerking off as he heard the
3 Solicitor, the Prosecutor describe what the crime was, the
4 crime against ^{Minor 1}. So the fact that he would do it in an
5 open courtroom with people all around, again, suggests a lack
6 of control. This urge is so strong in him he can't control it
7 even in a courtroom like this one.

8 There's a lot of talk about the static-99R, but bear in
9 mind, that's one of many things that Dr. Swan looked at. She
10 interviewed him. Unfortunately that was cut short, his
11 choice, not hers. She was trying to go into the details of
12 one of the crimes and he just walks out, and of course, he has
13 the right to walk out. She can't make him stay there. The
14 static-99, what I look at it is let's say you're having chest
15 pains and shortness of breath and you're wondering if
16 something's wrong. You go to a doctor to see if you have
17 heart trouble. Well, the doctor is going to ask you a number
18 of questions. He's going to take your blood pressure and
19 listen to your heart. He'll ask you about family history,
20 about your diet, about exercise, all those things. Now, what
21 he's doing is he knows based on thousands and thousands of
22 heart patients with these symptoms he can then tell you what
23 he thinks whether or not you're a risk of having a heart
24 attack and what corrective measures can be taken, and that's
25 kind of what the static-99R is. They looked at thousands of

1 sex offenders in different countries and tried to look at
2 certain things common to these people, and if you have enough
3 of these things you get a score. You get one point for each
4 of them, the higher the score, the greater the risk to
5 reoffend. Just like your heart doctor, he's got ten things
6 he's looking at. The more of those things you have the
7 greater your chance of having a heart attack. It's just plain
8 common sense. Like with the insurance industry Dr. Swan
9 talked about, they know that a young man under 25, and believe
10 me I was the father of one, they tend to get in accidents more
11 often than the rest of us. So their rates are higher, and
12 that's what the static-99R does. It's not an absolute. She
13 didn't rely her opinion just based on that. We wouldn't want
14 her to, and the manual for the static-99 says don't do that.
15 It says don't rely just on this, do a comprehensive evaluation
16 and that's what she did. She looked at the crimes, what the
17 witnesses said, what he told the police when he was caught,
18 what he told her, what the dynamic or changeable factors were
19 that affected his life and then also the static. She scored
20 him a four on that. The 74th percentile is what I wrote down.
21 It may have been 78, I'm not sure, twice as likely to reoffend
22 as the typical sex offender.

23 Now, counsel talked about this being 11 or 12 percent
24 chance, and I made the thing, well, if your plane was going to
25 crash and you had a 12 percent chance of that you wouldn't

Closing Argument by State

153

1 fly. Now, if the weather predicts a 12 percent chance of rain
2 you'll still have the picnic, but look at this, we're still
3 talking, if you look at that number, 11 or 12 percent, it's 11
4 or 12 percent of committing another sexual crime against a
5 boy, an underage boy, okay, not a 12 percent chance of robbing
6 a convenience store, stealing some cigarettes, shoplifting or
7 something like that. This is serious stuff! So that's what
8 she used. He got a four, which placed him in that higher
9 range to reoffend.

10 So there's also talk about prison offenses, and like Dr.
11 Swan ways, prison has very, very strict rules because there's
12 all kinds of things that can go bad in there for certain
13 conduct that you and I might think kind of normal on the
14 outside, but they have rules. He violated them, which makes
15 me wonder how he's going to be if he can't control himself,
16 obey the rules when you're watched 24-7, what's he like
17 outside.

18 Now, let's back up. What have we got? We've got the
19 sexually violent conviction. We've got the mental
20 abnormality. There's talk about the six-month thing. Well,
21 Ms. Gordon observed what she saw. He was, for lack of a
22 better word, jerking off in his jumpsuit when the guilty plea
23 was being read to him, when the Solicitor was telling what
24 happened. So you have that urge is so strong, and it's still
25 there, and nothing has changed. Nothing has changed. No

Closing Argument by Respondent

154

1 intervening thing like sex offender treatment has changed.
2 We've got the crime. We've got the mental abnormality. We've
3 got the likelihood to reoffend in such a degree it poses a
4 menace to the health and safety of others. So I would submit
5 to you the verdict should be that we have, indeed, met our
6 burden of proof beyond a reasonable doubt. There's enough
7 information here to leave you firmly convinced that Mr.
8 Flowers is, indeed, a sexually violent predator. Thank you.
9 Your Honor.

10 THE COURT: Thank you, sir. Mr. Falk.

11 MR. FALK: May it please the Court? Ladies and gentlemen
12 of the jury, Mr. Bogle.

13 I think when you are going back to the jury room the
14 Judge is going to instruct you, and he's going to instruct you
15 on the law. Your, your job is to listen -- is to make the
16 determination on the facts sort of within the confines of what
17 the law is, and one of the things I expect the Judge is going
18 to tell you is that what the role of an expert witness is in a
19 case, and I believe that the Judge will also advise you that
20 you're free to follow the opinion of an expert witness or
21 you're free to discount it in whole. I believe the Judge is
22 also going to instruct you that when you're listening to --
23 when you're considering the testimony of witnesses that you're
24 allowed to consider whether or not the witness may have a
25 particular bias. When you go back there, I want you to think

Closing Argument by Respondent

155

1 about whether or not you think that Dr. Swan has a particular
2 bias in this case. What do we know about Dr. Swan? Well, she
3 has a contract with the State of South Carolina and she gets
4 paid \$4,000 to do these evaluations, plus she does other
5 evaluations with the state. Whether or not that creates an
6 incentive for her to always keep bringing back evaluations
7 that recommend somebody for a commitment I don't know, but I
8 -- what I do know and she acknowledged that there is the 15
9 cases that I've, I've had with her she's always recommended
10 commitment, and in about eight cases that she's had with
11 another lawyer she's recommended commitment. You can consider
12 about whether or not for -- because she wants to protect her
13 contract with the State or whether or not just after years and
14 years of being a professional expert she just sort of has
15 gotten a bias that, you know, everything she sees is a
16 sexually violent predator. You're allowed to consider that.
17 If you think that she has any real bias in there, you're
18 allowed to, you're allowed to use that to discount her
19 testimony.

20 Now, there's just -- one thing I want you to consider
21 when you're thinking about whether or not there's any bias
22 here is when we got to this conversation about the, the
23 trafficking in -- trading offense that he had while he was at
24 South Carolina Department of Corrections, first of all, when
25 Dr. Swan talked about that offense she just talked about it as

1 trafficking originally when she -- during her direct
2 testimony, and I'm sure a lot of you all after you got done
3 with that you thought that he was trafficking in drugs on the
4 inside or some other kind of, you know, whether drugs, whether
5 it's weed, booze, whatever, but now, what, what it was is that
6 he was trading three bars of soap for a pair of boots, and
7 where I think you can see Dr. Swan's bias there is that when
8 Mr. Bogle was asking her questions about that she turned and
9 said, "Because people in prison will trade three bars of soap
10 for sexual favors." There's no basis for that, but she wants
11 to keep trying to dig the dagger into my client. There was no
12 basis for that, but that shows that she's not an independent
13 expert in this case. She's an expert for the State. She's
14 the State's expert. She practically -- I mean, she has a
15 contract with the Attorney General's Office. She has a
16 contract with the Department of Mental Health, and she was
17 here today to commit my client, and you all are the only thing
18 that stops from him being committed or not, and for you to
19 commit him, you've got to consider whether or not this process
20 is fair and whether or not her testimony is fair.

21 Now, she testified -- and also, you can consider whether
22 or not you think that testimony is speculative. Now, she
23 testified that she's basing really a lot of her opinion on
24 whether or not on what was going on in this courtroom when he
25 pled guilty. Now, she's relying on the testimony of a witness

Closing Argument by Respondent

157

1 who was in here who said that she saw him playing pocket pool.
2 I think is what her term was. You can, you can decide whether
3 or not you think that that was possible. He was standing
4 here. She was standing there. The judge is standing right
5 there, but apparently the judge didn't see it because I've got
6 to believe that a Circuit Court Judge in South Carolina if he
7 sees somebody doing something like that he's going to put an
8 end to the proceedings and hold the person in contempt. So
9 the only person apparently who saw this was the court
10 reporter, and maybe that did happen, you know. What he was
11 doing, I don't know, but even if you assume that it did happen
12 and that is what he was doing, you have to then get over
13 another assumption and assume, as she is, that the motivation
14 for that was that he was thinking about the victims from these
15 offenses, and there's no basis for that at all. She's
16 assuming that, that Ms. Gordon, you know, had the timing right
17 and that at the precise time while he's reading, you know, the
18 facts of the case is that's what got him aroused, but she
19 admitted that she didn't know, that he could have been aroused
20 by something that happened while he was back in the back
21 before coming out, that he couldn't have been aroused by
22 something else in the courtroom. She has no basis for knowing
23 what aroused him, but she wants to convict him, and she told
24 you that she's got to use that in order to make her diagnosis
25 that he's a pedophile. She said that if there was something

1 else that was arousing him at the time that would not support
2 her diagnosis that he was a pedophile. She also said that if
3 that, you know, she said that she needs conduct outside of
4 that six-month window to support a diagnosis for a pedophile
5 because at the end of the day we're talking about an 18 year
6 old kid at the time. Eighteen year old kids can do some
7 really stupid things. Some 18 year old kids can do some
8 really criminal things, but Mr. Bogle was saying nothing has
9 changed in this case. Well, two things have changed. First
10 of all, he's not an 18 year old kid anymore. He's a different
11 person. He's a different person who has a better
12 understanding of what motivates him sexually. He spent eight
13 years in prison, a young kid like that spent eight years at
14 the Department of Corrections with a label on his back that he
15 was going in there for crimes against children. I don't
16 really think -- I think you all can assume that that's
17 probably not an easy eight years to do, and so if he got into
18 some scuffles while he was in custody, I mean, we can assume
19 that that's not an easy eight years to do for a young kid like
20 that. He's a convicted sex offender against little children.
21 So I mean, I think that that was a -- I think that changes
22 somebody. I think eight years in prison changes somebody, and
23 I think eight years changes somebody when they go from being
24 18 to 26 changes somebody. So change has, has occurred.
25 Change has occurred in this young man. He knows who he is

Closing Argument by Respondent

159

1 now.

2 You have -- you can only rule -- you can only make a
3 decision today if you believe that the State has proven their
4 case beyond a reasonable doubt, and this is what I'm talking
5 about at the very beginning is that when you're thinking about
6 the reasonable doubt you cannot consider the fact that you
7 might not like the fact that he's committed crimes against
8 children, and you cannot let the fact that you don't think an
9 eight year sentence was long enough, you can't let that cloud
10 your decision today because you are not punishing this person.
11 You're determining -- you're making a decision whether or not
12 he needs to go to a confined facility in order to get
13 treatment, not the treatment that he can get while he's going
14 to be on community supervision for two years, but he needs, he
15 needs some type of treatment that's going to occur in a
16 confined facility. You are not punishing him. You're making
17 a decision whether or not he needs treatment, and another
18 thing that you have to put aside is you might not like the
19 fact that he's a homosexual and you might not like the fact
20 that he has gotten married to another man. Now, whether or
21 not it's -- has the same formality of a church wedding, I
22 don't know, but I mean, in his mind he's married, he's got a
23 -- he's got somebody who he refers to as his husband. You
24 cannot use that thought you might have to cloud your thinking
25 about him, and you cannot use the fact that he's committed

Closing Argument by Respondent

160

1 crimes against children to cloud your thinking about him. You
2 have to go back now. This is supposed to be -- we're supposed
3 to be making a determination about whether or not he has a
4 mental disease and whether or not he needs treatment, and
5 whether or not he meets a mental disease, now we're going back
6 to Dr. Swan, and Dr. Swan says that he's, he's a pedophile and
7 she acknowledged that she has to show conduct outside that six
8 months because it can't just be somebody experimenting, and so
9 now you have to rely on what I think is pretty speculative
10 testimony from, from a professional expert saying what was
11 going on in his mind when he, when he was pleading. You have
12 to speculate what he was doing and why he was doing it. Dr.
13 Swan has no basis for knowing what, what he was thinking about
14 when he was doing this, and he may have been, but you've got
15 to be convinced beyond a reasonable doubt what was going on
16 there because I contend this whole case determines on what was
17 happening on that day that he was pleading guilty because
18 unless he's got some kind of disease that's going over just
19 some type of experimentation of an 18 year old kid, then you
20 don't have pedophilia. So I think there's doubt about whether
21 or not there's a mental disease, and I think there's doubt
22 about whether or not it's likely to reoffend. You are making
23 a decision about whether or not somebody's liberty is going to
24 be confined, whether he's going to lose his rights to come and
25 go as he pleases, whether he's going to lose his rights on

Closing Argument by Respondent

161

1 where he goes to eat, who he sees. He's going to be in a
2 confined facility. He's going to be wearing a jumpsuit. He's
3 going to be in a jail. He's going to be in a cell, excuse me.

4 In order to, in order to put somebody in that kind of
5 situation you've got to be convinced beyond a reasonable doubt
6 that he needs to be in that confined facility, and whether or
7 not there's a ten percent chance that somebody is going to
8 cross the line is that a sufficient likelihood in your mind
9 that he needs to be in a confined facility? It's not saying
10 it's -- she's not saying it's more likely than not he was
11 going to do it. She couldn't even put any percentages on
12 whether or not, whether or not, percentage that whether or not
13 he would do anything. She's saying, "Well, if you compare him
14 with a group of people he's twice as likely as the normal sex
15 offender to reoffend, but she doesn't know what the likelihood
16 of a sex offender to reoffend is. Again, it's, it's extremely
17 speculative testimony that she wants you all to rely on in
18 order for you to make your decision that he needs to be
19 committed.

20 At the end of the day I just hope that you all will give
21 her testimony a serious consideration about whether or not
22 she's proven to you that he is -- has a mental defect and that
23 she's proven to you whether or not it is likely he's going to
24 reoffend. Just remember when we're talking about a medical
25 diagnosis, and I know -- Mr. Bogle referred to somebody with

Closing Argument by Respondent

162

1 the heart going in and getting a test and, you know, whether
2 or not he's having chest pains and what that means, but
3 remember she's making a diagnosis based on her opinions, based
4 on stuff that -- based on her evaluation of facts, and it is a
5 diagnosis, but it's not like a medical diagnosis. You know
6 some medicine has hard, you know, quantifiable tests that can
7 be run. You know somebody walks in and says his arm really
8 hurts and they can go and they can get an x-ray, and they can
9 -- and you can look at an x-ray and see that it's broken.
10 There's no x-ray that we can do on this man's mind. Medicine
11 has that kind of precision. Psychiatry, psychology, not so
12 much, but again, you must be convinced beyond a reasonable
13 doubt before you send this person to a confined facility for
14 possibly five more years. She says that the, that the -- her
15 testimony was that typically with the kind of program that
16 they're running now that it's five years to get out of there.
17 This man has already spent a third of his life in custody. I
18 think it's time that he be let go and move on with his life.
19 He's not the person he was when he was 18 years old. He's a
20 different man. Thank you.

21 THE COURT: Thank you, counsel.

22 MR. BOGLE: Nothing in reply, Your Honor.

23 THE COURT: All right. With that said, the next phase of
24 the case will be the charge of the law. I'm going to let you
25 all step back to your room, give us a few minutes to get ready

Closing Argument by Respondent

163

1 to go forward with that. I'm advised by Madam Clerk she's
2 very graciously arranged for lunch after that charge. So
3 we'll have lunch for you, come back, begin your
4 deliberations after that. So please do not discuss this
5 case until that time comes. So if you all will step back to
6 your room, come back in here, I think the charge will probably
7 take about 35 maybe 40 minutes and then we will break for
8 lunch.

9 (Whereupon, the following takes place outside the
10 presence of the jury.)

11 THE COURT: All right. We'll take about 10 minutes. Any
12 proposed charges?

13 MR. BOGLE: Yes, Your Honor. I'll give you a hard copy.

14 We need to make sure the exhibits are right because a
15 page had to be photocopied. That's the State's proposed
16 charge, Your Honor, and I double-checked. The crime that
17 you're identifying as a sexually violent crime is criminal
18 sexual conduct in the second degree.

19 THE COURT: Okay.

20 MR. BOGLE: The South Carolina crime.

21 THE COURT: Okay. All right. We'll stand at ease for
22 about eight more minutes.

23 (Exhibits reviewed and approved by counsel for State and
24 Respondent.)

25

OFF THE RECORD

Charge

164

1 (On the record. The following takes place outside the
2 presence of the jury.)

3 MR. BOGLE: Judge, I handed up a verdict form, too?

4 THE COURT: Yes, sir. You did.

5 All right. I think we're ready to go if they are.

6 (Whereupon, the following takes place in the presence of
7 the jury.)

8 THE COURT: All right. Mr. Foreman and ladies and
9 gentlemen of the jury, it's now time for the charge of the
10 law.

11 My wife has finally browbeat me into getting a hearing
12 aid. It's in my left ear. So I'm trying to adjust to that
13 hearing aid and my voice, and I don't -- I'm not exactly sure
14 how it carries. So, Mr. Foreman, if I'm not speaking loud
15 enough please let me know. If I'm too loud, let me know.
16 Hopefully I'm doing okay with it. If any of you back there in
17 the back need me to adjust, just let me know.

18 This charge is probably going to take 35 to 40 minutes,
19 and as I explained to you, now it becomes my duty as the trial
20 judge under the constitution of this state to charge and
21 instruct you the law applicable to the case. It is your duty
22 as jurors to accept and apply the law as I state it to you at
23 this time. The State has brought this case under the sexually
24 violent predator law of South Carolina. The State seeks a
25 civil commitment of Joshua Flowers, the Respondent, for long-

Charge

165

1 term control, care and treatment in a secure facility. This
2 is not a criminal proceeding seeking incarceration but rather
3 is a proceeding seeking civil commitment. The State of South
4 Carolina alleges or claims that the Respondent, Joshua
5 Flowers, is a sexually violent predator under the law.
6 Respondent denies that he is a sexually violent predator, and
7 the burden of proof is therefore on the State to prove by
8 evidence sufficient to satisfy each of you beyond a reasonable
9 doubt that Mr. Flowers is a sexually violent predator. If the
10 State is unable to meet that burden of proof as to one or more
11 of the elements of this claim, the Respondent is entitled to a
12 finding that he is not a sexually violent predator.

13 Ladies and gentlemen, I want to make sure that you
14 understand that Mr. Flowers is not accused of committing a
15 crime in this proceeding. As you've heard from the testimony,
16 we did have previous charges for which he was sentenced by the
17 court. The Respondent has now completed his sentence for
18 those charges, and the State is now alleging that Mr. Flowers
19 is a sexually violent predator. The State has the burden of
20 proving in this case and must prove its case beyond a
21 reasonable doubt. If you find that the State has not met this
22 burden, Respondent will be released. If you find that the
23 State has met its burden of proof and find that the Respondent
24 is a sexually violent predator, he will not be released but
25 will be committed to a secure -- excuse me, treatment facility

1 in Columbia operated by the South Carolina Department of
2 Mental Health.

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

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

Charge

167

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

9 While argument of counsel is a beneficial part of every
10 trial, you should remember that the statements made by counsel
11 are not evidence. In presenting arguments, counsel often
12 refer to the evidence. However, you should base your verdict
13 on the evidence as you remember it. Therefore, if there are
14 any conflicts between the recollection of counsel about the
15 evidence and your own recollection, you should rely upon your
16 own understanding of the evidence.

17 I'll speak with you now about burden of proof. Ladies
18 and gentlemen, in most civil cases tried in the Court of
19 Common Pleas, the burden of proving a claim is by the
20 preponderance, or the greater weight, of the evidence.
21 However, in this type of case under this particular statute,
22 the burden of the State is greater than that. Here it must be
23 beyond a reasonable doubt. As already stated to you, the
24 State has the burden of proof. Under the law of the state,
25 according to the sexually violent predator statute, the State

1 must prove its case to the standard of proof beyond a
2 reasonable doubt. If the State fails to meet this high
3 burden, then you must find that Mr. Flowers is not a sexually
4 violent predator.

5 Now, what is reasonable doubt in the law? Proof beyond a
6 reasonable doubt is proof that leaves you firmly convinced
7 that the Respondent is a sexually violent predator. Ladies
8 and gentlemen, there are very few things in this world that we
9 know with absolute certainty, and in this type of case the law
10 does not require proof that overcomes every possible doubt.
11 If based on your consideration of the evidence you are firmly
12 convinced that Mr. Flowers is a sexually violent predator,
13 then you must return a verdict for the State. If, on the
14 other hand, you think there is a real possibility that he is
15 not a sexually violent predator, you must give him the benefit
16 of the doubt and return a verdict for the Respondent.
17 Reasonable doubt may arise from evidence that is in the case
18 or from the lack of evidence in the case. It is up to you,
19 the jury, to determine whether or not a reasonable doubt
20 exists in the case.

21 Now, there are two types of evidence which are presented
22 during a trial: direct evidence and circumstantial evidence.
23 Direct evidence is the testimony of a person who claims to
24 have actual knowledge of a fact, such as an eyewitness. It is
25 evidence which immediately establishes the main fact to be

Charge

169

1 proved.

2 Circumstantial evidence is proof of a chain of facts and
3 circumstances indicating the existence of a fact. It is
4 evidence which immediately establishes collateral facts from
5 which the main fact may be inferred. Circumstantial evidence
6 is based on inference and not on personal knowledge or
7 observation. It is proof that does not actually establish the
8 fact in question, but that asserts or describes something else
9 from which you may either reasonably infer the truth or the
10 fact or at least reasonably infer an increase in the
11 probability that the fact is true. For circumstantial
12 evidence to be sufficient to warrant the finding of a fact,
13 the circumstances must lead to that fact with reasonable
14 certainty. The facts and circumstances should be considered
15 in light of the ordinary experience and common sense. The
16 existence of a fact cannot be based on speculation, surmise or
17 conjecture.

18 The law makes absolutely no distinction between the
19 weight or value to be given to either direct or circumstantial
20 evidence, nor is a greater degree of certainty required of
21 circumstantial evidence than of direct evidence.

22 Credibility of witnesses, in determining what the facts
23 in the case are, you must judge the credibility, which simply
24 means the believability of the witnesses and the value or
25 weight to be given to their testimony. You alone must decide

1 the force, effect and validity of the testimony. In making
2 this decision there are many things you may, and should, take
3 into consideration, such as: the appearance and manner of the
4 witness on the witness stand, a characteristic often referred
5 to as the demeanor of the witness; was the witness forthright
6 or hesitant; was the witness' testimony consistent or did it
7 contain discrepancies; what was the ability of the witness to
8 know the facts about which he or she testified; was there some
9 reason a witness would want to give testimony which would help
10 or hurt one side or the other, in other words, was the witness
11 biased or prejudiced; was the testimony of the witness
12 reasonable when considered in the light of all the evidence in
13 the case and in the light of your own experience and common
14 sense; was the testimony of the witness corroborated or made
15 stronger by other testimony and evidence or was it made weaker
16 or impeached by such other testimony and evidence.

17 As jurors please understand you have the right to believe
18 a small portion of a witness' testimony and discard the larger
19 portion or vice versa. You may believe all of a witness'
20 testimony or none. You may believe the testimony of a single
21 witness against that of many witnesses or the other way
22 around. And of course, you do not determine the validity
23 merely by counting the number of witnesses presented by each
24 side.

25 The fact that testimony is not controverted does not mean

Charge

171

1 you must accept it as valid and undisputed. You still must
2 gauge the credibility of the witness to determine the
3 believability of the facts offered through the testimony.

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

10 Let me speak with you about expert witnesses. During the
11 course of the trial you also heard the testimony of an expert
12 witness. The rules of evidence ordinarily do not permit
13 witnesses to testify to opinions or conclusions. Instead,
14 they can testify as to the facts that they perceived, such as
15 what they saw, smelled, heard or touched. However, an
16 exception to this rule exists for a witness we call an expert
17 witness. A witness who has special knowledge, skill,
18 experience, training or education in a particular field may
19 state an opinion as to the relevant and material matters in
20 which the witness claims to be an expert.

21 In determining the weight to be given to such an opinion,
22 you should likewise consider the qualifications and
23 credibility of the expert and the reasons given for the
24 opinion. You are not bound by such opinion. Rather, you
25 should give it the weight, if any, which you think it

1 deserves. The value and effect of expert witness is a matter
2 to be solely estimated by you, the jury. No opinion of an
3 expert can be accepted in and of itself as accurate or
4 reliable but must be weighed by you and convince your judgment
5 beyond a reasonable doubt and with the same force and effect
6 as any other fact proved in the case before you can rely upon
7 it.

8 You must consider expert testimony in the same manner as
9 you do any other testimony and give to it such weight as you
10 believe it to be entitled when considered with all the other
11 evidence in the case. Such testimony is given for the purpose
12 of helping you and not for the purpose of controlling your
13 judgment.

14 The elements which the State must prove beyond a
15 reasonable doubt are, one, that the Respondent has been
16 convicted of a sexually violent offense. I charge you that
17 criminal sexual conduct in the second degree is a sexually
18 violent offense; and two, that the Respondent suffers from a
19 mental abnormality or personality disorder that makes him
20 likely to engage in acts of sexual violence if not confined in
21 a secure facility for long-term control, care and treatment.

22 Inherent in these two elements is that the State must
23 prove the requirement that the Respondent's mental abnormality
24 or personality disorder causes him serious difficulty in
25 controlling his behavior. In other words, the State must

Charge

173

1 prove beyond a reasonable doubt that the individual it seeks
2 to commit suffers from a mental illness which he cannot
3 sufficiently control without the structure and care provided
4 by a mental health facility, rendering him otherwise likely to
5 commit a dangerous act.

6 In order for you to better understand the elements of the
7 State's cause of action, I am going to define for you some of
8 the terms that I have just used.

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

14 Two, likely to engage in acts of sexual violence means
15 the person's propensity to commit acts of sexual violence is
16 of such degree as to pose a menace to the health and safety of
17 others so that he is a danger to others.

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

25 If the State carries its burden of proof and convinces

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

7 Mr. Foreman, and ladies and gentlemen of the jury, as you
8 retire and begin your deliberations a little later, I wish to
9 express the hope that each of you will be mindful of the
10 importance of your responsibility. You are not called upon to
11 serve as jurors very often, and the proper performance of the
12 duty requires each of you to reach the height of freeing your
13 mind of all improper influences.

14 As the presiding officer of this court, I am vitally
15 concerned that whatever verdict you find will be the result of
16 your going into the jury room and confining your consideration
17 to the evidence and the law that you have heard in this
18 courtroom, weighing it fairly and impartially, as I have every
19 confidence that you will do.

20 Your verdict in the case cannot be based on sympathy,
21 compassion, prejudice or emotion or some other consideration
22 not found in the evidence. Remember your verdict must be
23 unanimous.

24 I will now explain the verdict form and possible
25 verdicts. Mr. Foreman, we have a verdict form. If you all

Charge

175

1 will pay attention to me, please, I will read this verdict
2 form to you, and hopefully it will explain itself to you.
3 It's the State of South Carolina, County of Dillon, in the
4 Matter of the Care and Treatment of Joshua Flowers,
5 Respondent. We're in the Court of Commons Pleas of the Fourth
6 Circuit, and the case number for reference is 2016-CP-17-192.
7 This document is entitled verdict form. Has the Petitioner,
8 the State of South Carolina, proved beyond a reasonable doubt
9 Joshua Flowers is a sexually violent predator under the South
10 Carolina Sexually Violent Predator Act? We, the jury,
11 unanimously answer the questions as follows: yes, Joshua
12 Flowers is a sexually violent predator or, no, Joshua Flowers
13 is a -- is not a sexually violent predator. Do not give any
14 weight as to how they are numerically listed. They have to be
15 put down in some order. So don't give any weight as to how
16 they are numerically listed. As I said, there's a signature
17 line for Mr. Foreman to sign once the verdict has been
18 reached, and if you will date it and knock on the door and we
19 will receive the verdict.

20 Please do not begin your deliberations until we return
21 from lunch. The 12 of you will be deliberating. Mr. Foreman,
22 if anybody needs to take a break once you begin, cease your
23 deliberations until you have all 12 jurors back in the room.
24 Once again, your verdict will have to be a unanimous verdict.

25 If anybody needs to take a break such as a smoke break or

Charge

176

1 step outside, if you will let the security and bailiff staff
2 know they'll try to attend to those needs. Once again, I want
3 to thank Madam Clerk for arranging lunch because we are now at
4 almost 12:30.

5 Once we come back the 12 jurors, Sheriff, will need to go
6 into the jury room. The two alternates, we will need to put
7 in another room. Okay. And in regards to that, Mr. Foreman,
8 if you get back there when you do begin your deliberations if
9 somebody refuses to deliberate, that very seldom happens, but
10 it has happened, for example, somebody just says, "I'm not
11 even discussing this case with you all," you will immediately
12 notify the bailiff staff and they will contact me and we will
13 take appropriate remedy. That's why we have alternate jurors.
14 That has very seldom happened, but it has.

15 Okay. I hope all of you enjoy your lunch, and remember,
16 don't discuss this case amongst yourselves, don't allow
17 anybody to approach you and discuss this matter with you.

18 I think we're going to have some transportation arranged
19 if you need to or if you want to drive out yourself that will
20 be perfectly permissible. If you would prefer to do that, I
21 am going to defer to Madam Clerk at this time so she can
22 explain to you where lunch has been arranged to make sure
23 everybody knows, and take it from there.

24 (Clerk explains lunch plans.)

25 THE COURT: All right. I'm going to ask you to step back

Charge

177

1 to the jury rooms while we get everything ready. I've got to
2 check in with the attorneys one last time. We got to check
3 off on the exhibits. Mr. Foreman, when you come back, we will
4 have a verdict form and the exhibits back in the room awaiting
5 you all to begin your deliberations. All right. Enjoy your
6 lunch and hang with us just a few more minutes until the
7 sheriff retrieves you and you all can go on out. Okay.

8 (Whereupon, the following takes place outside the
9 presence of the jury.)

10 THE COURT: All right. Gentlemen, any exceptions or
11 additions to the charge?

12 MR. BOGLE: None from the State, Your Honor.

13 MR. FALK: No, Your Honor.

14 THE COURT: Once again I want to thank you all for you
15 all's work on this case and the presentation of it. As I've
16 told both of you, it makes my job a lot easier when I have
17 excellent attorneys who know what they're doing, well-prepared
18 and work with each other to the degree they can to get the
19 case to, to the court and before a jury, and I really
20 appreciate you all.

21 If you'll check off on these exhibits we'll have
22 everything ready for them and for you all's knowledge I think
23 lunch will be at the B and C. It's perfectly all right for
24 you all to go, but just be forewarned that that's where the
25 jury would be in case you --

Charge

178

1 MR. BOGLE: So, they're going to start deliberating when
2 they get back and that'll be about --

3 THE COURT: 45 minutes probably.

4 MR. BOGLE: Okay.

5 THE COURT: 50 minutes.

6 MR. BOGLE: The exhibits are fine.

7 THE COURT: Okay.

8 MR. BOGLE: Do they know -- I can't remember if you told
9 them they could start deliberating when they get these. I
10 don't remember. Did you say that?

11 THE COURT: I told them not to deliberate --

12 MR. FALK: I thought he said not deliberate while they're
13 gone.

14 MR. BOGLE: Yeah. Yeah. But the signal to start
15 deliberating is when these documents walk in the room. I'm
16 not sure if they know that.

17 THE COURT: Okay. We can bring -- have we got all the
18 transportation arranged?

19 (Staff indicates affirmatively.)

20 THE COURT: Okay. Just bring them back in. They don't
21 even have to sit down. We'll tell them that and we'll send
22 them right out. Hold up just a minute, Mr. Bailiff. Hold up.
23 I forgot something. Since we got bailiff staff and security
24 going, do you all waive oath for them or you want --

25 MR. BOGLE: Waive what?

Verdict

179

1 THE COURT: You want me to put them under oath about not
2 discussing the case or you all satisfied with waiving that?

3 MR. BOGLE: I don't think that'd be a problem.

4 MR. FALK: No, sir. That's all right.

5 MR. BOGLE: Staff I don't think it would be a problem.

6 THE COURT: Okay. Bring them in. About to forget that.

7 (Whereupon, the following takes place in the presence of
8 the jury.)

9 THE COURT: Okay. Transportation is arranged. One thing
10 I wanted to make clear when you come back, only the 12 regular
11 jurors will go into the jury room. The other two jurors we'll
12 find another room for them to relax. Mr. Foreman, as soon as
13 Madam Court Reporter brings the verdict form and the exhibits
14 back to you, you may begin your deliberations then, but do not
15 deliberate before then. All right. I'll turn it over to --

16 (Lunch begins at 12:27. Jury exits courtroom.)

17 THE COURT: Court will be in recess for lunch.

18 OFF THE RECORD

19 (Deliberations begin at 1:36 p.m. Verdict reached at
20 1:54 p.m. On the record. The following takes place in the
21 presence of the jury.)

22 THE COURT: Madam Clerk.

23 THE CLERK: Mr. Foreman, have you reached a verdict?

24 FOREMAN: Yes, ma'am. We have.

25 THE CLERK: Would you hand it to the bailiff, please?

1 (Complies with request and Court reviews.)

2 THE COURT: All right. Signed and dated. You may
3 publish the verdict, Madam Clerk.

4 THE CLERK: On Your Honor's docket as case 2016-CP-17-193
5 [sic], In the Matter of the Care and Treatment of Joshua
6 Flowers, Respondent, has the Petitioner, the State of South
7 Carolina, proved beyond a reasonable doubt that Joshua Flowers
8 is a sexually violent predator under the South Carolina Sexual
9 Predator Act, we, the jury, unanimously answer the question as
10 follows: yes, Joshua Flowers is a sexually violent predator,
11 signed by foreperson, Charles Bridgers, 11-7-17.

12 If this is your verdict would you signify by raising your
13 right hand?

14 (All jurors raise right hand.)

15 THE COURT: All right. Thank you. Anything further of
16 the jury, gentlemen?

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

18 MR. FALK: No, Your Honor.

19 THE COURT: All right. Mr. Foreman, ladies and gentlemen
20 of the jury, I sincerely thank you for sitting as jurors on
21 this case and your patience with the Court. We appreciate
22 very much your service. Madam Clerk will speak with you in
23 just a few minutes about your expense checks.

24 (Clerk addresses jury about work excuses and payment.)

25 THE COURT: Thank all of you very much for sitting, and

Verdict

181

1 if you happen to be drawn again this year in the circuit
2 court, of course you will not have to serve and then, you
3 know, for three calendar years, if you should be drawn you'll
4 have that exemption. So hopefully you would come help us
5 again if you're drawn, but thank you very much. You all are
6 dismissed at this time unless you'd like to stay. We've got
7 several other things we're going to do this afternoon, but we
8 won't need a jury on those. All right. Thank you.

9 (Whereupon, the following takes place outside the
10 presence of the jury.)

11 THE COURT: All right. Anything else from the record
12 either side?

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

14 MR. FALK: No, Your Honor, not at this time.

15 THE COURT: All right. In that the jury has reached a
16 verdict answering the question as to whether the Respondent,
17 Joshua Flowers, is a South Carolina sexually violent predator
18 under that particular act the jury found yes, that he was or
19 is. It is therefore ordered that the Respondent, Joshua
20 Flowers, to be committed to the Department of Mental Health
21 for his long-term control, care and treatment. Respondent,
22 Joshua Flowers, is to continue to be detained at the Dillon
23 County Detention Center and then transported to the secure
24 facility of the South Carolina Department of Mental Health.
25 The detention center is to transport Respondent on such

Verdict

182

1 scheduled date as it coordinates with the Department of Mental
2 Health. It is so ordered.

3 Mr. Flowers, your attorney will explain to you the
4 details of any appeal that you may wish to pursue. You do
5 certainly have a right to appeal this matter if you feel that
6 any errors have been committed, but he will discuss that with
7 you.

8 Anything else?

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

10 MR. FALK: Nothing from the Respondent, Your Honor.

11 THE COURT: Thank you once again.

12 (Adjourned.)

13

14

15

16

17

18

19

20

21

22

23

24

25

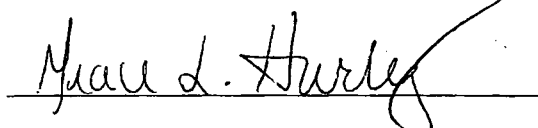
Certificate

183

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Hearing held in the case of In the Matter of the Care and Treatment of Joshua Flowers, Respondent, held in the Court of Common Pleas for Dillon County, Dillon County Courthouse, Dillon, South Carolina, on November 6-7, 2017.

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


Grace L. Hurley, CVR-CM-M
Official Reporter

January 24, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'D. Alexander', is written over a horizontal line.

David Alexander
Appellate Defender

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

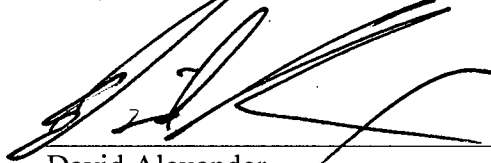
ATTORNEY FOR APPELLANT

This 28th day of August, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 28th day of August, 2018.

RECEIVED
AUG 28 2018
SC Court of Appeals