

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Carmen T. Mullen, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF ROBERT POWELL,

APPELLANT

APPELLATE CASE NO. 2018-000426

RECORD ON APPEAL

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1 for whatever reason. Be it drug use, be it genetics or
2 whatever, dropping out of school early, just don't have the
3 smarts to sit there and engage in an interview. We've all
4 run into people like that in our own lives I'm sure.

5 And so she kind of went the extra mile to see what there
6 was about this guy. They both ran the Static and got the
7 same thing, but, you know, there are certain things everybody
8 had in common that Dr. Gehle found, as well as Dr. Gottfried.

9 First off, he had a heavy cocaine use problem back when
10 he was on the outside. That's all stopped now because he's
11 been in prison. He's got the domestic violence arrest, and
12 there's some literature that was talked about from the
13 witness stand linking domestic violence crimes to reoffending
14 in a violent or sexually violent manner.

15 He's got the three convictions, three young girls. The
16 youngest girl -- it started when she was 3, went until she
17 was 11. The others were in the 5- to 7-year range. One girl
18 it lasted for 5 years. So you have very young children, all
19 girls. You have oral sex. You have anal sex. You have
20 vaginal sex. You also have some damage done to one girl,
21 some rectal damage that was found by the medical doctor, and
22 there was testimony about that. So we've got that.

23 And what was the excuse? This is -- and both doctors
24 said this. What was the excuse that Mr. Powell told his
25 victims? He said your mother is not giving me -- satisfying

1 me enough or words to that effect.

2 He denied these things when he was interviewed by both
3 doctors. In court, he seemed to admit it. He talked about
4 how a guilty plea works when the judge and the solicitor or
5 the prosecutor reads out what the crime is and you've got to
6 admit to having done that or you can't be sentenced. It's
7 not a valid guilty plea. I think when he took the stand he
8 kind of admitted that he had done some of these things,
9 although he denied it to both doctors.

10 Dr. Gehle found some risk factors that came out during
11 the testimony yesterday, risk factors which increase the
12 likelihood to reoffend. The fact that he has a history of
13 wanting to have sex with young girls, in fact a strong desire
14 for prepubescent girls to be his victims, sexual
15 preoccupation I think was the word that came out, the
16 conflicts of infidelity in his married life suggest a lack of
17 emotionally intimate relations with adults over his history,
18 and lifestyle impulsiveness.

19 And then it came down to the Static. The Static 99,
20 like Dr. Gottfried explains, is one of these actuarial
21 things. I didn't know what that word meant when I first
22 heard it years ago, and she talked about the life insurance
23 example. If you apply for life insurance, they might have
24 you go see a doctor to see what your lifestyle is like. And
25 if you do certain things that they know that, hey, this guy

1 might die sooner than somebody else who doesn't, and so you
2 get charged a higher premium.

3 Well, that's what the Static 99 is. It's developed
4 studying thousands of sex offenders, guys who had offended
5 and then re-offended. And because of his circumstances, he
6 got a low score, a 1. Both doctors agree on that.

7 But I think you can also examine there might be some
8 flaws to this process. The Static predicts your likelihood
9 to reoffend 5 years out, 5 years from today. Okay? The law
10 says what is your likelihood to reoffend, no time limit.
11 That's the decision you have to make.

12 And this was admitted by I think both doctors on the
13 stand that the guys who designed the Static, in the manual
14 they say don't rely just on this. It's a tool, but not the
15 only tool. And I think even Dr. Gehle said -- I wrote this
16 down. To my recollection, she said you can't predict who
17 will reoffend based on one thing.

18 Sex offender treatment. It seems to me from my
19 recollection of the testimony that his version was, well,
20 they offered it in prison. I was kind of waiting for them to
21 come to me. He didn't actively seek it out.

22 He says he might have it if he's released, but Dr.
23 Gottfried reached out to Probation and Parole to find out
24 what he was facing if he gets released. Dr. Gehle knew about
25 that from hearing the testimony, but I don't think she

1 actually did the reaching out. But Dr. Gottfried did.

2 He's facing two years of community supervision that will
3 run out in September of this year. And he testified that
4 that includes sex offender treatment and he knew it was in
5 Walterboro, but he didn't know who with or when it would
6 start or was there even an appointment set up like next week
7 or the week after.

8 And the lack of sexual offender treatment I think
9 figured into the conclusion that this guy has problems. So
10 where are we?

11 The burden of proof is beyond a reasonable doubt. After
12 hearing everything you've heard, are you firmly convinced
13 that this man is a sexually violent predator? If not, do a
14 verdict for him. If you are, the verdict would be for the
15 State.

16 He's got the crimes. He's got the mental abnormality.
17 The next thing is can he control it. Does he have a lack of
18 control that requires him to be confined in a secure
19 facility, and the lack of control is 16 years and the very
20 ages of the girls and the time length the crime happened with
21 all three of his victims.

22 That's where we are. And again, you as the finders of
23 fact, you've got to listen to all of the testimony. You can
24 decide how much of a witness to believe and how little. You
25 can believe everything that a witness says or none of it or

1 anything in between. That is totally up to you.

2 And I think when comparing the testimony of the two
3 qualified experts, the bottom line is one of them went a
4 little bit further than the other did, and that little bit
5 further is the way you should go as well.

6 Thank you.

7 Your Honor.

8 THE COURT: Thank you.

9 MR. FALK: May it please the Court.

10 THE COURT: Yes, sir.

11 MR. FALK: Mr. Bogle.

12 CLOSING ARGUMENT ON BEHALF OF THE RESPONDENT

13 MR. FALK: One of the things I disagree with Mr. Bogle
14 about is there's no place I'd rather be today than right here
15 because this is my job. I love this job. I love
16 representing people in these types of situations where
17 they're sort of getting rolled over by the system.

18 This case, as I said in my opening statement, is going
19 to have serious consequences. You're going to decide my
20 client's liberty going forward and that's why -- well, let me
21 just back up.

22 One other thing to keep in mind is that we have a system
23 in the United States of trial by jury by your peers. So I
24 mean what that means is you're supposed to bring your
25 everyday experiences with you back into the jury room, but

1 what it also means is you need to discard any prejudices that
2 you may have. During our voir dire at the beginning when
3 those questions were asked, we did the best we could to try
4 and maybe have you understand what prejudices you might have
5 that are relevant to this case, and you have to set those
6 aside.

7 So when you go back in the jury room, take your
8 experiences, but put the prejudices aside. And I think many
9 people are going to have a bad opinion about somebody who has
10 committed these crimes against children. There's no question
11 that that is a bad thing, but whether he has pedophilia is
12 really not the issue here today. The issue here today is
13 whether he's a risk to reoffend, and that's where the focus
14 needs to be for y'all.

15 Now, the State has to prove their case beyond a
16 reasonable doubt, and that's kind of the standard. I mean
17 y'all are all familiar with it from criminal trials.

18 I contend I don't even think the State has met their
19 burden by a preponderance of the evidence. I think at the
20 beginning Mr. Bogle talked about the 51 percent. That's the
21 preponderance of evidence, and that's what's required in a
22 civil trial. I don't even think the State has reached that
23 or satisfied that burden, much less gone to beyond a
24 reasonable doubt.

25 And let's compare two experts here. Mr. Bogle may have

1 kind of run with those a little bit, but Dr. -- Dr. Gehle --
2 first of all, she was appointed by this -- by the Court to be
3 this evaluator. She's not my expert. I mean she's -- she's
4 testifying on my client's behalf in this case, but I didn't
5 retain her. She's the one that the Court appointed and she's
6 the one who reached a decision that he is not a sexually
7 violent predator because he poses the -- does not pose a risk
8 to reoffend.

9 She is chief psychologist for the Department of Mental
10 Health and remember that, if he is committed today, he's
11 going to go to a program that's run by the Department of
12 Mental Health. You have to consider whether or not it makes
13 sense if somebody from the Department of Mental Health, their
14 chief psychologist, doesn't think he needs to be in the
15 program, why are we going to send him to that program?

16 She's also testified that basically her primary job for
17 the last several years has been doing these sex offender pre-
18 commitment evaluations. That's what we're dealing with
19 today. This is a sexually violent predator pre-commitment
20 trial, and that's what we're here today for. She's done 150
21 of them.

22 Compare that to Dr. Gottfried. She said that she's done
23 15 or so evaluations regarding sexually violent predators.
24 She wasn't sure exactly what part of that 15 was pre-
25 commitment evaluations. She thought maybe more than half.

1 So Dr. Gehle is ten times more experienced doing this,
2 if you give her credit for all 15, maybe 20 times more
3 experienced. The experience matters because Dr. Gehle also
4 has a -- she's seen 150 other people who have gone through
5 this system and she's been able to evaluate who was the worst
6 of the worst.

7 That's what this program is for, the worst of the worst.
8 Everybody testified that just because you committed one of
9 these crimes does not mean that you need to go into this
10 program. This program is for high risk offenders, the worst
11 of the worst.

12 So again, I mean weigh the two evaluations. You're
13 going to have Dr. Gehle's evaluation and Dr. Gottfried's
14 evaluation.

15 Now, the State likes to take a lot of time to talk about
16 the fact that Dr. Gottfried's evaluation was somehow more
17 thorough, and I'm sure there's a multitude of these tests
18 with different alphabet soup titles that she could have
19 performed. We know that she performed what's called a
20 Connors test, the SASSI test, the PAI test, the Abel test,
21 the VRT, the visual reaction time test, the PCLR Hair test.

22 She performed all of those, but I asked her specifically
23 on the stand which one of those related to her diagnosis, and
24 none of them related to her diagnosis. She could've
25 performed 20 more tests that were irrelevant to the cause,

1 but that's not going to make her opinion more valid. It just
2 means she ran a bunch of tests that didn't make any sense.

3 We did -- Dr. Gehle did testify that although Dr.
4 Gottfried did the PAI test, which is a Personality Assessment
5 Inventory, she did another one. She did the MMPI. So Dr.
6 Gehle did do more tests than just the Static 99, and she also
7 knows how to score people on the Hair psychopathy test and
8 she didn't think it was relevant in this case.

9 Let's remember when we talk about the testing that Dr.
10 Gottfried did, two of them really I think support my client
11 more than it supports the State's case. The one was we
12 talked about the visual reaction time test, and that's where
13 they would show you these pictures and sort of if your eye
14 lingered on one picture longer than the other, it was kind of
15 a subliminal type of message that that was something that
16 you're interested in more than the other. And my client had
17 a response of a normal heterosexual male to those -- to that
18 test. There was no problem with that test.

19 And the other test, you know, the Hair psychopathy test,
20 that's whether or not he's got these sociopathic tendencies.
21 My client didn't come anywhere near that test, and that was
22 the State's expert that testified to that.

23 Dr. Gottfried [sic.] could have performed those other
24 tests. She could've performed the Connors test maybe, but
25 she didn't think it was necessary in this case.

1 Both the doctors used the Static 99, and I think
2 probably both doctors would admit that it's not perfect.
3 It's impossible to predict the future. The Static 99 is not
4 perfect. It's an exceptional tool, but it's the best one
5 that's out there. My client got a score of a 1. That is a
6 below-average risk, and at the 5-year -- a 5-year re-offense
7 rate was 3.9 percent.

8 Now, Mr. Bogle is right that we're not just worried
9 about what the -- what his risk of reoffending on the 5 years
10 would be. We're looking at his risk to reoffend over a
11 lifetime.

12 But remember my client is 57 years old today. We know
13 that if he were 60 years old today, his risk would be down to
14 1.9 percent. So it's one thing if we're looking at a 30-
15 year-old male who is in this situation and he had a risk. We
16 are going to know there's a lifetime in front of that person.
17 My client is 58 years old. He's in his declining years. I
18 think it's pretty safe to assume that the risk is going to go
19 down with age.

20 We're looking at a likelihood to reoffend. What I
21 thought was interesting and I hope y'all were noticing is
22 that when I asked Dr. Gottfried what the likelihood to
23 reoffend, what was her definition of likelihood to reoffend,
24 because I'm trying -- I'm puzzled myself how a 3.9 percent
25 risk is a likelihood to reoffend.

1 And I'm not sure if Dr. Gottfried was totally, you know,
2 comfortable with what that definition is. I think you'll
3 remember that Mr. Bogle went on to show her the statute and
4 she read it. So I'm not sure how confident she is in the --
5 in what the status of -- what the standard is we follow in
6 likelihood to reoffend.

7 Dr. Gehle gave her professional opinion that Mr. Powell
8 is not likely -- is not likely to reoffend. She's seen these
9 cases, 150 of them before that, and she knows that he's not
10 the worst of the worst.

11 Now, the State wanted to put a lot of focus on the fact
12 that my client was denying the offenses. He denied the
13 extent of the offenses with each of the doctors.

14 Now, remember, Dr. Gehle testified that she did her
15 evaluation based on the fact that he did what was charged in
16 the indictments. That's what forensic psychologists have to
17 do. That's the rules. You go by what was charged in the
18 indictment and you assume it was true.

19 And Dr. Gehle went by the indictments. She assumed that
20 all of those facts were true, but she still reached her
21 opinion that he's not a likelihood to reoffend.

22 My client admits to have done some of this, fondling.
23 He just does not admit to having done the extent of the crime
24 that's CSC, criminal sexual conduct with a minor in the first
25 degree. But you saw him on the stand. You saw that man. He

1 knows that he harmed those children. He knows that he's
2 caused pain to those children.

3 But when we're talking about the plea agreement, Mr.
4 Bogle was right that, you know, in a standard plea agreement,
5 the defendant raises their hand and swears to tell the truth
6 and then at some point in the plea process the solicitor says
7 -- you know, reads the basic charges as stated in the
8 indictment and then the judge turns to him and says is that
9 what you did and is that why you're pleading guilty, and my
10 client said yes.

11 He's facing 25 years. He was under -- he thought he was
12 facing 25 years on each one of those counts. He had an
13 opportunity to take a plea for twelve years. Consider
14 whether or not that's something that is reasonable in that
15 type of situation if you're worried about it. You knew that
16 you'd done something wrong; so you'll take the plea for
17 twelve years.

18 But remember, there are two sides to this plea deal.
19 Not only did my client take this plea, but the State offered
20 that plea. Now, let's just consider that point for a minute.
21 It's a solicitor at some point here in this courtroom, I
22 assume. It may be a different courtroom at the time, but
23 here in Beaufort County, and he had indictments for three
24 counts of CSC. Each one of them carries 25 years.

25 If he takes any one of those to trial and gets a

1 conviction, he's probably going to count on the judge is
2 going to give him 25 years. If he takes all three to trial,
3 maybe he could get 75 years. I don't know, but the solicitor
4 thought this was a fair deal. There's a lot of reasons why
5 they could've thought it was a fair deal, but the solicitor
6 was fine with him doing twelve years, even though he could
7 have possibly have gotten 25 years, maybe gotten 75 years.

8 There's another thing I think you have to consider is
9 that you have to believe that twelve years of prison is going
10 to change somebody. My client up on the stand is I am sure a
11 different person than he was in 2006 when he was arrested.
12 He's scared of going back to prison. I think that's a
13 motivation right there.

14 He also knows that he has two strikes on him and, in
15 South Carolina, we have something that are called serious and
16 most serious offenses. I believe that criminal sexual
17 conduct with a minor is what's called a two-strike offense, a
18 most serious offense. If he gets another -- as he's
19 testified, if I get in trouble again, I'm going away for
20 life. He understands what's at risk right here. He
21 understands what's at risk for the future. He does not want
22 to go back to prison for the rest of his life.

23 He's a man that realized that he's probably messed up
24 most of his life. He spent a lot of time in his past on
25 drugs, messing up as much as he could. He spent twelve years

1 in prison -- ten years, two months in prison. He wants a
2 chance to finally do something with his life as he goes
3 forward. He's got people who knew what he was charged with
4 and are still behind him. His mother is still -- he has the
5 support of his mother. He testified that he's still in
6 contact with the rest of his family, and he has a job.

7 Now, why -- why I went through the whole process of
8 bringing those two people on the stand was to make y'all
9 understand that there is a plan here. You know, he's going
10 to get out and he's going to have a place to live. So that's
11 one of those stressors you can have when you're getting out
12 of prison. He's going to have a place to live and he's going
13 to have a job and he's going to have a good-paying job. He's
14 going to be able to focus on it.

15 He's got a plan. He says that he's sober. He says that
16 he has -- there's access to all kinds of drugs. His comment
17 was there's more drugs in the Department of Corrections than
18 there is on the street. I'm sure that's an exaggeration, but
19 he never got charged for it while he was in the Department of
20 Corrections for contraband. I believe that, and I think that
21 sobriety is another thing that he's going to be able to rely
22 on going forward.

23 Just remember, we have Dr. Gehle, court-appointed.
24 She's a full-time employee of the Department of Mental
25 Health. She does not believe that he's a risk. He's not the

1 worst of the worst.

2 You have to consider -- again, I remind you why would
3 you send somebody to a program run by the Department of
4 Mental Health when the chief psychologist from the Department
5 of Mental Health is saying he doesn't need to be there? He's
6 not a risk.

7 I think that when you weigh the evidence, you'll find
8 that the State hasn't even met the burden of proof by a
9 preponderance of the evidence, by the 51 percent. I don't
10 think they've come anywhere close to reaching a beyond a
11 reasonable doubt preponderance.

12 But that's what you all have to do today. You have to
13 set aside his criminal past because that's already been taken
14 care of. You are not here today to try to add some penalty
15 to him. You're here today to decide whether or not he is a
16 risk to reoffend or whether or not he can go home.

17 I think when you consider the testimony of the experts
18 and decide which of the two experts is more qualified and
19 more experienced, you have to reach the conclusion that he's
20 not a risk to reoffend.

21 I really appreciate your time and your attention. Thank
22 you.

23 THE COURT: Anything, Mr. Bogle?

24 MR. BOGLE: No, Your Honor. Thank you.

25 THE COURT: All right. Are y'all okay? Okay.

CHARGE ON THE LAW

1
2 THE COURT: Mr. Foreperson and members of the jury,
3 you've heard the evidence and the arguments of both parties.
4 I will now explain to you the law which applies to this case.

5 The State has brought this case under the Sexually
6 Violent Predator law of South Carolina. The State seeks the
7 civil commitment of Robert Powell, the respondent, for long-
8 term control, care, and treatment in a secure facility. This
9 is not a criminal proceeding seeking incarceration, but
10 rather is a proceeding seeking civil commitment.

11 Now, the State of South Carolina alleges or claims that
12 the respondent, Robert Powell, is a sexually violent predator
13 under the law, and the respondent, Mr. Powell, denies that he
14 is a sexually violent predator, and the burden of proof is
15 therefore on the State to prove by evidence sufficient to
16 satisfy each of you beyond a reasonable doubt that Mr. Powell
17 is a sexually violent predator. If the State is unable to
18 meet that burden of proof as to one or more of the elements
19 of this claim, the respondent is entitled to a finding that
20 he is not a sexually violent predator.

21 Now, ladies and gentlemen, I want to make sure that you
22 understand that Mr. Powell is not accused of committing a
23 crime in this proceeding. As you've heard from the
24 testimony, he did have previous charges for which he was
25 sentenced by the Court. The respondent has now completed his

1 sentence for those charges, and the State is now alleging
2 that Mr. Powell is a sexually violent predator.

3 Now, the State has the burden of proof in this case and
4 must prove its case beyond a reasonable doubt. Again, if you
5 find that the State has not met this burden, the respondent
6 will be released. If you find that the State has met its
7 burden of proof and find the respondent is a sexually violent
8 predator, he will not be released, but will be committed to a
9 secure treatment facility in Columbia operated by the South
10 Carolina Department of Mental Health.

11 Now, under our Constitution and Code of Laws, only you,
12 the jury, can make the findings of fact in this case. I'm
13 not permitted to tell you how I feel about the evidence that
14 has been presented and, throughout this trial, I have
15 intended to be fair and impartial to both parties involved.

16 Ladies and gentlemen, to determine the facts in this
17 case, you will have to evaluate the credibility or
18 believability of witnesses. I have already discussed with
19 you some of the things that you may consider as you decide
20 whether or not to believe a witness's testimony about a
21 particular matter.

22 You can believe as much or as little of each witness's
23 testimony as you think proper. You may believe the testimony
24 of a single witness against that of many witnesses or just
25 the opposite. You may believe a part of a witness's

1 testimony and disbelieve the rest. You should not decide the
2 case merely by counting the number of witnesses presented by
3 each side.

4 Now, in a trial, evidence may be direct or
5 circumstantial. Direct evidence is testimony by a witness
6 about what the witness personally saw, heard, or did.
7 Circumstantial evidence is indirect evidence, that is it is
8 proof of one or more facts from which one can find another
9 fact.

10 You are to consider both direct and circumstantial
11 evidence. The law permits you to give equal weight to both,
12 but, again, it's for you, the jury, to decide how much weight
13 to give any evidence.

14 Now, normally, a person cannot give opinion testimony in
15 a trial. Normally, when a person testifies, they must
16 testify as to what they either saw, heard, or sensed by
17 smell, or something of that nature.

18 However, there is an exception when someone is qualified
19 because of education or experience. They are permitted to
20 give you their opinion in certain areas if the Court
21 qualifies them that way. Ladies and gentlemen, that does not
22 mean that you must accept the opinion, but it is evidence for
23 you to use in any way you see appropriate.

24 Now, the same Constitution and laws which designate and
25 make you, the jury, the finders of fact make me the

1 instructor of the law. You must -- you must accept the law
2 as I give it to you. If I am wrong, there is another place
3 and time for that error to be considered and, if necessary,
4 corrected. But for now, you must accept the law as I give
5 it to you. This means that you should not be concerned with
6 what you may think the law should be, but only with what I
7 charge you the law is.

8 Now, again, in most civil cases tried in a Court of
9 Common Pleas, the burden of proving a claim is by what we
10 call a preponderance or greater weight of the evidence.
11 However, in this type of case under this particular statute,
12 the State's burden is greater than that. It must be beyond a
13 reasonable doubt.

14 And again, as I stated, the law of this state according
15 to the Sexually Violent Predator statute, the State must
16 prove its case to the standard of proof beyond a reasonable
17 doubt. If the State fails to meet this high burden, then you
18 must find Mr. Powell is not a sexually violent predator.

19 Now, what is reasonable doubt in the law? Proof beyond
20 a reasonable doubt is proof that leaves you firmly convinced
21 that the respondent is a sexually violent predator. Ladies
22 and gentlemen, there are very few things in this world that
23 we know with absolute certainty and, in this type of case,
24 the law does not require proof that overcomes every possible
25 doubt.

1 If, based on your consideration of the evidence, you are
2 firmly convinced that Mr. Powell is a sexually violent
3 predator, then you must return a verdict for the State. If,
4 on the other hand, you think there is a real possibility that
5 he is not a sexually violent predator, you must give him the
6 benefit of the doubt and return a verdict for the respondent.

7 Ladies and gentlemen, reasonable doubt may arise from
8 evidence that is in this case or from the lack of evidence in
9 this case. It is up to you, the jury, to determine whether
10 or not a reasonable doubt exists in this case.

11 Now, the elements which the State must prove beyond a
12 reasonable doubt in this case are that the respondent has
13 been convicted of a sexually violent offense, and I charge
14 you that criminal sexual conduct with a minor in the first
15 degree is a sexually violent offense.

16 And the State must also prove beyond a reasonable doubt
17 that the respondent suffers from a mental abnormality or
18 personality disorder that makes him likely to engage in acts
19 of sexual violence if not confined in a secure facility for
20 long-term control, care, and treatment.

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

1 individual it seeks to commit suffers from a mental illness
2 which he cannot sufficiently control without the structure
3 and care provided by a mental health facility, rendering him
4 otherwise likely to commit a dangerous act.

5 In order for you to better understand the elements of
6 the State's cause of action, I am going to define for you
7 some of the terms that I have just used.

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

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

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

25 Now, if the State carries its burden of proof and

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

7 Now, ladies and gentlemen, I am going to give each of
8 you a copy of these instructions back in the jury room.
9 During your deliberations, you may refer to the instructions
10 to guide you in your decision-making. You must consider the
11 instructions as a whole and not follow some and ignore
12 others. And at the very end of the case, we're going to ask
13 that each of you return all copies of the instructions back
14 to the Court.

15 Now, also, I permitted you all to take notes during the
16 trial of this case. Your notes should be used only as aids
17 to your memory and should not be allowed to take precedence
18 over your independent memory of facts. The notes are only
19 for each juror's personal use in refreshing recollection of
20 the evidence.

21 When in deliberations at the end of the case, do not
22 rely on the recollection of a juror who took notes about the
23 testimony of a witness solely because the juror took notes.
24 You should not be unduly influenced by the notes of other
25 jurors. As we all know, notes can be wrong.

1 Notes are not entitled to any greater weight than each
2 juror's memory of the evidence, and those jurors who did not
3 take notes should rely on their independent recollection of
4 the evidence and should not be influenced by the fact that
5 another juror has taken notes.

6 Keep in mind, ladies and gentlemen, that every word that
7 has been spoken in this courtroom is recorded by audiotape
8 and can be replayed for you during deliberations, if you
9 request it. The only thing I need to make sure you all
10 understand is that if you ask me for a certain witness's
11 testimony, I am required to play that entire witness's
12 testimony, which means the direct examination, the cross, any
13 recross, any redirect. All right?

14 Mr. Foreperson and members of the jury, as you retire to
15 begin your deliberation in this case, I wish to express the
16 hope that each of you are mindful of the importance of your
17 responsibility here today. You are not called upon very
18 often to serve as jurors, and the proper performance of that
19 duty requires each of you to free your mind of all improper
20 influences.

21 Please don't get the idea that I am trying to intimate
22 to you how you should decide this case. As I have already
23 told you, under the laws of this state, you, the jury, are
24 the sole judge of all questions of fact, and it would be
25 highly improper for me to influence you in your performance

1 of that duty.

2 However, ladies and gentlemen, as the presiding officer
3 of this Court, I am vitally concerned that whatever verdict
4 you reach will be the result of you going back into your jury
5 room and confining your consideration to the evidence and the
6 law that you have heard here in this courtroom, weighing it
7 fairly and impartially, as I have every confidence you will.

8 Ladies and gentlemen, everyone is entitled to justice in
9 this case, both the State and the respondent, Mr. Powell.
10 You owe no support or sympathy to anyone.

11 Mr. Foreperson, I remind you your verdict must be
12 unanimous. It must be the verdict of all twelve jurors. And
13 to that end, my law clerk has prepared a verdict form.

14 It has one question on it, ladies and gentlemen. It has
15 the caption and in the case it says the State of South
16 Carolina, County of Beaufort, in the Matter of the Care and
17 Treatment of Robert Powell, Respondent.

18 The question is has the petitioner, the State of South
19 Carolina, proved beyond a reasonable doubt Robert Powell is a
20 sexually violent predator under the South Carolina Sexually
21 Violent Predator Act?

22 And then it just says, we, the jury, unanimously find --
23 and either the answer is, yes, Robert Powell is a sexually
24 violent predator or, no, Robert Powell is not a sexually
25 violent predator.

1 Ladies and gentlemen, please don't infer from the order
2 that I put yes or no. Every trial we just reverse it. All
3 right?

4 Underneath that, Mr. Foreperson, there is a line for you
5 to sign your name and date this form. When the jury has
6 reached a unanimous verdict, I need you to knock on your jury
7 room door and we're going to accept you back into the
8 courtroom to take your verdict. All right?

9 Ladies and gentlemen, for the very last time, I'm going
10 to tell you to go back to your jury room, but not discuss
11 this case. I want you to grab a bite to eat.

12 If there's anything further on the law that the lawyers
13 want me to charge you, I'll bring you back in here and I'll
14 further charge you on the law. If not, you are going to
15 receive the verdict form, Mr. Foreperson, twelve copies of
16 the jury charge, as well as the other evidence that was
17 introduced in this case, and that's going to be your signal
18 to begin your deliberations. All right?

19 Ladies and gentlemen, thank you. I'm going to go ahead
20 and excuse you now back to your jury room.

21 (WHEREUPON, the jury exited the courtroom at 12:22 p.m.)

22 THE BAILIFF: The jury is clear, Your Honor.

23 THE COURT: Thank you, Rick. Any exceptions or
24 additions to the charge from the State?

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

1 THE COURT: From the defense?

2 MR. FALK: Your Honor, none.

3 THE COURT: All right, gentlemen. I appreciate it.

4 Let's go ahead and make sure we've got just the evidence
5 that's in here. We have the twelve copies xeroxed for the
6 jury, and I'm going to bring the alternate out as well.
7 Okay?

8 (WHEREUPON, there was a pause in the proceedings for the
9 evidence to be checked, after which the proceedings
10 resumed as follows.)

11 THE BAILIFF: That's it, Your Honor.

12 THE COURT: Okay. We're good to go. Bring the
13 alternate out. That would be great.

14 THE BAILIFF: Yes, ma'am.

15 THE COURT: Thank you.

16 (WHEREUPON, jury deliberations began at 12:24 p.m.)

17 MR. BOGLE: Can she give us extra copies of the jury
18 charge? We got the original ones, but the corrected ones?

19 THE COURT: Sure. Yeah, you can go ahead or do you want
20 to just email it to them? Do you mind if she just emails it
21 to you?

22 MR. BOGLE: That's fine.

23 THE COURT: Is that okay?

24 MR. BOGLE: That's fine.

25 THE COURT: Okay. Absolutely.

1 MR. BOGLE: It could save a tree.

2 THE COURT: Save a tree. Exactly.

3 THE LAW CLERK: What did you say? Yes about email or no
4 about email?

5 THE COURT: Yes, email is fine. We're saving some
6 trees.

7 (WHEREUPON, the alternate juror entered the courtroom.)

8 THE COURT: Sir, thank you so much for your willingness
9 to serve. As you know, I only lost one juror. So we did not
10 lose another. So I need to take you out now for the
11 deliberations.

12 I will tell you at this time you are allowed to discuss
13 the case. You can go home and talk about it, if you choose
14 to. And sometimes the attorneys may want to ask you when
15 you're leaving if you had any thoughts or wished to talk to
16 them in any way. You're welcome to or not welcome to. It's
17 completely up to you. Okay?

18 Thank you for being here. We appreciate it. Rick will
19 give you -- if you need a work excuse or need anything else,
20 but again, thank you. I truly appreciate it.

21 (WHEREUPON, the alternate juror was released.)

22 THE COURT: Okay. We're at ease.

23 (WHEREUPON, the jury charge was marked as Court's
24 Exhibit Number 9.)

25 (WHEREUPON, there was a break in the proceedings from

1 12:26 p.m. until 3:15 p.m., after which the proceedings
2 resumed as follows.)

3 THE LAW CLERK: So the question that they asked is how
4 long is long-term care.

5 MR. BOGLE: We can't answer it. There's been no
6 testimony. That's just -- there was no testimony about that.

7 THE LAW CLERK: Okay. I just wanted to let you guys
8 know.

9 MR. BOGLE: Yeah.

10 THE LAW CLERK: Then I will -- do you agree as well?

11 MR. FALK: That there's no testimony, yes.

12 MR. BOGLE: Uh-huh.

13 THE LAW CLERK: Okay. Then I will let the judge know
14 that and then she will likely respond that there's -- that's
15 not something for you to be concerned with.

16 MR. FALK: Okay.

17 MR. BOGLE: That the record is --

18 THE LAW CLERK: That it's not in evidence. Do you want
19 to go ahead and mark this?

20 MR. BOGLE: That will be Court's Exhibit which?

21 THE COURT REPORTER: 10.

22 MR. BOGLE: Okay.

23 (WHEREUPON, the jury note was marked as Court's Exhibit
24 Number 10.)

25 (WHEREUPON, there was a break in the proceedings from

1 3:15 p.m. until 3:26 p.m., after which the proceedings
2 resumed as follows.)

3 THE COURT: All right. It's my understanding the jury
4 has reached a verdict. Are you all ready for me to bring
5 them in? Mr. Bogle? Mr. Falk?

6 MR. BOGLE: Yes, Your Honor.

7 MR. FALK: Yes.

8 THE COURT: Are you all ready? All right.

9 (WHEREUPON, the jury entered the courtroom at 3:28 p.m.)

10 THE COURT: All right. Mr. Foreperson, I understand the
11 jury has reached a verdict. Is that correct, sir?

12 THE FOREMAN: We have, Your Honor.

13 THE COURT: Would you please hand it to the bailiff?

14 (WHEREUPON, the foreman complied.)

15 THE COURT: Thank you.

16 VERDICT

17 THE COURT: In the Matter of the Care and Treatment of
18 Robert Powell, the jury states that we, the jury, unanimously
19 answer the question above as follows.

20 That yes, Robert Powell, is a sexually violent predator.

21 Signed by our foreperson.

22 Ladies and gentlemen of the jury, if this is your
23 verdict, will you please indicate by raising your right hand?

24 (WHEREUPON, all jurors complied.)

25 THE COURT: Thank you. And I note all the jurors have

1 raised their right hand.

2 Is there anything further required of this jury, Mr.
3 Bogle?

4 MR. BOGLE: Nothing from the State, Your Honor. Thank
5 you.

6 THE COURT: Mr. Falk?

7 MR. FALK: No, Your Honor.

8 THE COURT: All right. Ladies and gentlemen, thank you.
9 You have resolved this matter for us, and we appreciate that.
10 You also have more than earned your exemption for the next
11 three years from jury service.

12 I am -- I live on the island on Hilton Head. I am here
13 obviously most of the time. I'm in chambers here and then I
14 travel the circuit, but if you happen to run into me
15 somewhere, please say hello. Remind me you sat on a jury.

16 Y'all have been wonderful, and thank you. These cases
17 are difficult, and I appreciate that and I want to tell you
18 how grateful we are that you have been able to resolve this
19 matter for us.

20 Thank you. You all are excused.

21 (WHEREUPON, the jury was released and exited the
22 courtroom at 3:30 p.m.)

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

24 THE COURT: Yes, sir.

25 THE BAILIFF: The jury is clear and the door is closed,

1 Your Honor.

2 MR. BOGLE: I have a proposed order of commitment, Your
3 Honor.

4 THE COURT: Okay.

5 MR. BOGLE: And what it says is that the detention
6 center -- he'll stay there, and they'll call Mental Health
7 and set up a time to bring him down there.

8 THE COURT: Okay.

9 MR. BOGLE: And I will give to the officers the
10 paralegal's direct phone number to call down there and let
11 her know to find out a time.

12 THE COURT: Okay.

13 MR. BOGLE: It has to -- you have to set up a time.

14 THE COURT: Okay. Thank you. Okay. Anything further,
15 gentlemen?

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

17 THE COURT: Mr. Falk?

18 MR. FALK: Thank you, Your Honor.

19 THE COURT: Thank you. Good luck to you, Mr. Powell.

20 MR. BOGLE: Thank you, Your Honor.

21 THE COURT: Thank you.

22 (WHEREUPON, the proceedings ended at 3:32 p.m.)

23

24 --- END REQUESTED TRANSCRIPT ---

25

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF STATE

Beaufort vs. Robert Powell

INDICTMENT/CASE#: 04-GS-07-1902
AW#: H533255
Date of Offense: 8/16/04
S.C. Code §: 16-3-655
CDR Code #: 0131815

AKA:
Race: W Sex: M Age: 46
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip [REDACTED]
DL# [REDACTED] SID# [REDACTED]

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO:

Criminal Sexual Conduct With a Minor 1st Degree
in violation of § of the S.C. Code of Laws, bearing CDR Code # 0385

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC w/minor 1st or Lowd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, _____ (Defendant initial)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:
Kimberly Smith, Solicitor
Robert Powell, Defendant
Deborah Hood, Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 12 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____ plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

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

PTUP _____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly prmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____
 Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

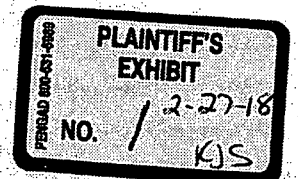
Recipient: *Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$35.13 (Public Def/Prob)	\$500	\$
\$73.3, 1B TP (Law Enforce. Funding)	\$25	\$25.00
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$
\$50-21-114(BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$3.75
TOTAL		\$128.75

Richard J. Young, Clerk of Court Deputy Clerk
Court Reporter: Brenda Cooley

PRESIDING JUDGE
Judge Code: _____
Sentence Date: 10/2/06

Certified - A True Copy
Pam V. Burries
Jerr Ann Roseneau - Clerk of Court
Beaufort County, SC - Pam Burries



WITNESSES

WADE-BCSO

ARREST WARRANT NUMBER

H533255

10/19/2004

ACTION OF GRAND JURY

True Bill

Carly Powers

Foreperson of Grand Jury

Date: DEC 1 6 2004

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

2004-GS-07-01902

THE STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

RANDOLPH MURDAUGH III. , Solicitor

COURT OF GENERAL SESSIONS

11/18/2004

TERM

THE STATE
VS.

POWELL, ROBERT DALE

Arrest Warrant

Indictment for

CRIMINAL SEXUAL CONDUCT-MINOR 11-14 INC L

SC Code : 16-03-0655(2)

CDR Code: 396

Class:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF STATE

Beaufort vs. Robert Powell

INDICTMENT/CASE#: 04-GS-07-1901
AW#: H533256
Date of Offense: 1986-1991
S.C. Code §: 16-3-625
CDR Code #: 013/8/5

AKA: _____
Race: W Sex: M Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip _____
DL# _____ SID# _____

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO:

Criminal Sexual Conduct with A Minor 1st Degree
in violation of §16-3-625 the S.C. Code of Laws, bearing CDR Code # 0385

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (Defendant Initial) _____
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Kimberly Smith
Solicitor

Robert Powell
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 12 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____ plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

set by SCDPPPS

PTUP

_____ days/hours Public Service Employment

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

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

Recipient:

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§35.13 (Public Def/Prob)	\$500	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$25.00
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$3.75
TOTAL		\$128.75

PRESIDING JUDGE

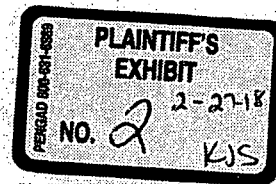
Judge Code: _____

Sentence Date: 10/9/06

Court Reporter: _____

Certified - A True Copy

[Signature]
Jerri Ann Roseneau - Clerk of Court
Beaufort County, SC - Pam Burries



WITNESSES

WADE-BCSO

DOCKET NO.

2004-GS-07-01901

THE STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

RANDOLPH MURDAUGH III., Solicitor

COURT OF GENERAL SESSIONS

11/18/2004

TERM

ARREST WARRANT NUMBER

H533256

THE STATE
VS.

10/21/2004

ACTION OF GRAND JURY

POWELL, ROBERT DALE

True Bill

Patto Culbertson

Foreperson of Grand Jury

Date: JAN 14 2005

VERDICT

APR 7 2005

Indictment for

CRIMINAL SEXUAL CONDUCT-MINOR 11-14 INC L

Foreperson of Petit Jury

Date:

SC Code : 16-03-0655(2)

CDR Code: 396

Class:

STATE OF SOUTH CAROLINA

COUNTY OF Beaufort
STATE

VS. Robert Powell

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 04-GS-07-1897

AW#: 11558874

Date of Offense: 1988-1998

S.C. Code §: 16-3-655

CDR Code #: 0131815

AKA:
Race: W Sex: M Age: 46
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip
DL# [REDACTED] SID# [REDACTED]

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Criminal Sexual Conduct with a minor 1st Degree

in violation of §16-3-655 the S.C. Code of Laws, bearing CDR Code # 0385

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (Defendant Initial)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Kimberly Smith
Clerk

Robert Powell
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 12 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____ plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:
PTUP _____ days/hours Public Service Employment

Recipient:	
*Fine:	
\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
\$35.13 (Public Def/Prob)	\$500
\$73.3, 1B TP (Law Enforce. Funding)	\$25
\$33.7, 1B TP (Drug Court Surcharge)	\$100
\$50-21-114(BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	
TOTAL	\$375
	\$128.75

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

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

[Signature]
Clerk of Court, Deputy Clerk
Court Reporter: Brenda [Signature]

PRESIDING JUDGE
Judge Code: 01
Sentence Date: 10/17/06

Certified - A True Copy
[Signature]
Jeri Ann Roseneau - Clerk of Court.
Beaufort County, SC - Pam Burries

PLAINTIFF'S EXHIBIT
NO. 3 2-27-18
KLS

WITNESSES

WADE-BCSO

ARREST WARRANT NUMBER

H558874

10/27/2004

ACTION OF GRAND JURY

True bill

Carolyn Powers

Foreperson of Grand Jury

Date: DEC 1 6 2004

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

2004-GS-07-01897

THE STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

RANDOLPH MURDAUGH III., Solicitor

COURT OF GENERAL SESSIONS

11/18/2004

TERM

THE STATE
VS.

POWELL, ROBERT DALE

APP-07-2004-0001

Indictment for

Sex/Crim sex conduct w/min <11yrs-1st d e

SC Code : 16-03-0655(1)

CDR Code: 0385

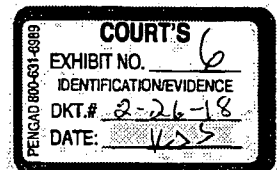
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STATE OF SOUTH CAROLINA)	IN THE COMMON PLEAS COURT
)	
COUNTY OF BEAUFORT)	FOR THE 14th JUDICIAL CIRCUIT
)	
In Re Care and Treatment of)	CASE NO.: 2016-CP-07-01069
)	
)	
Robert Powell)	RESPONDENT'S MOTION
Respondent,))	IN LIMINE TO EXCLUDE
_____))	CERTAIN TESTIMONY

Respondent, by counsel moves the Court *in limine* to exclude the utterance or introduction of certain testimony and or statements described below from the State's opening statement, case in chief, and closing argument. As grounds for this motion Respondent asserts that the utterance or introduction of such testimony and statements would violate his right to due process as protected by the 5th Amendment to the United States Constitution and Article 1 Section 3 of the South Carolina Constitution. Moreover Respondent asserts that the probative value of such information would be substantially outweighed by the risk of unfair prejudice such information would inject into these proceedings.

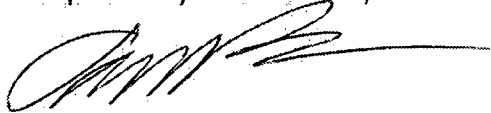
1. Any statements relating to the legislative history of S.C. Code Ann. § 44-48-30 et seq. including without limitation the terms **mentally abnormal**, and **extremely dangerous group of sexually violent predators**.
2. All references to whether Respondent may have the right, if committed, to petition annually for release from the SVP program, and whether he would receive annual evaluations.
3. Information regarding Respondent's prior arrests on non-sexually related charges where disposition of which is unknown and or Nolle Pros'd. Specifically
 - a. September 1979 charge for Grand Larceny of a Motor Vehicle
 - b. January 1991 Fraudulent Check Charge
4. All non-sexual misdemeanor convictions for which more than 5 years has elapsed since the date of conviction or release from confinement.
 - a. August 1985 charge for DUI and Unlawful Carrying of a Pistol



- b. August 1988 charge for Criminal Domestic Violence
- c. June 1995 charge of Simple Possession of Marijuana

5. Information regarding South Carolina Department of Corrections disciplinary charges for offenses that were neither sexual nor violent in nature.

Respectfully Submitted,



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jfalklaw@gmail.com

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)

IN THE MATTER OF THE)
 CARE AND TREATMENT OF)
 ROBERT POWELL,)
 RESPONDENT.)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT

CASE NO. 2016-CP-07-01069

ORDER OF COMMITMENT

2018 FEB 28 PM 3:35
 CLERK OF COURT

The trial of this case was held in the Beaufort County Court of Common Pleas the week of February 26, 2018. A jury of citizens from Beaufort County heard this case pursuant to a request for a jury trial filed by the State. Senior Assistant Attorney General James G. Bogle, Jr. represented the State and James K. Falk, Esquire, represented the Respondent. The jury having heard the presentation of the evidence made the following findings of fact pursuant to S. C. Code Ann. Sections 44-48-90 and 44-48-100:

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

NOW, THEREFORE, IT IS ORDERED THAT:

- (a) Respondent Robert Powell is committed to the Department of Mental Health for his long-term control, care and treatment;
- (b) Respondent Robert Powell is to continue to be detained at the Beaufort County Detention Center, and then transported to the secure facility of the South Carolina Department of Mental Health. The Detention Center is to transport Respondent on such scheduled date as it coordinates with the Department of Mental Health.

AND IT IS SO ORDERED.



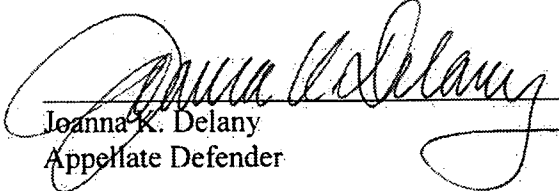
CARMEN T. MULLEN
 Fourteenth Judicial Circuit
 Court of Common Pleas

February 28, 2018
 Beaufort, South Carolina

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the 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,



Joanna K. Delany
Appellate Defender

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

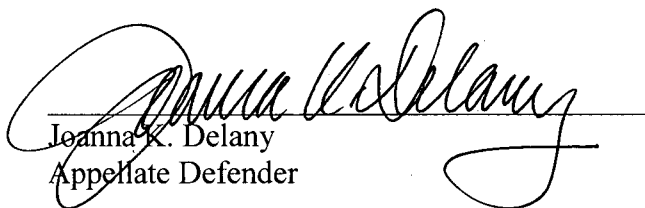
ATTORNEY FOR APPELLANT

This 29th day of May, 2019.

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,



Joanna K. Delany
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 29th day of May, 2019.

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SC Court of Appeals