

**ORIGINAL**

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY

George C. James, Jr., Circuit Court Judge

IN THE MATTER OF THE CARE AND  
TREATMENT OF BOBBY RUSSELL,

APPELLANT

APPELLATE CASE NO. 2011-204866

RECORD ON APPEAL

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**SC Court of Appeals**

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STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE MATTER OF THE CARE  
AND TREATMENT OF BOBBY  
RUSSELL,

PLAINTIFF,

IN THE COURT OF COMMON PLEAS

TRANSCRIPT OF RECORD  
#: 2011-CP-18-00394

November 1, 2011  
Dorchester County Courthouse

BEFORE:

HONORABLE GEORGE C. JAMES, JR., PRESIDING JUDGE.

APPEARANCES:

Lloyd Flores, Esquire  
Assistant Attorney General

Andrew Shepherd, Esquire  
Attorney for Bobby Russell, Jr.

TAKEN BY MELISSA R. SINGLETARY  
CERTIFIED VERBATIM REPORTER

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1     OPENING STATEMENTS OF MR. FLORES:

2     Mr. Flores: Your Honor may it please the Court?

3     The Court:         Yes.

4     Mr. Flores: Mr. Shepherd, Mr. Russell. Good afternoon

5         ladies and gentlemen. My name is Lloyd Flores. As I  
6         introduced myself to you earlier today, I'm employed  
7         by the office of the Attorney General. This case is  
8         about the protection of the citizens of Dorchester  
9         county in the State of South Carolina. As Judge  
10        James has indicated, this is a case brought under  
11        the Sexually Violent Predator Act. We are here today  
12        to answer one question. Is Bobby Russell a sexually  
13        violent predator? That's Mr. Russell, sitting next  
14        to Mr. Shepherd, his attorney. But what does that  
15        mean? How is a person a sexually violent predator?  
16        As the Judge stated, our legislature about thirteen  
17        years ago, passed the Sexually Violent Predator Act.  
18        It did so with two thoughts in mind; one that there  
19        exists, within our state, certain individuals who  
20        have mental abnormalities or personality disorders  
21        that make them more likely to commit acts of sexual  
22        violence. And second, that these individuals need  
23        treatment at a secure facility, because they are  
24        extremely dangerous individuals to the public. The  
25        State does contend that Mr. Russell is one of those

1 individuals. What I say during my opening statement  
2 and my closing arguments, I may make mistakes in the  
3 law and the judge, as he has stated so far, is the  
4 judge of the law. He knows the law and if I make a  
5 mis-statement of that law, I apologize because  
6 that's a mistake, but whatever he says, is what the  
7 law is. But my understanding of the Sexually Violent  
8 Predator Act defines a person to be a sexually  
9 violent predator in this way. That they one, have  
10 been committed, or I'm sorry, they have been  
11 convicted of a crime which has been defined as a  
12 crime of sexual violence or a sexually violent  
13 offense and two, that the person suffers from a  
14 mental abnormality or personality disorder that  
15 makes them more likely to commit another act of  
16 sexual violence if not confined for long term  
17 controlled care and treatment. So, the State today  
18 must prove to you that Mr. Russell, one has been  
19 convicted of a sexually violent offense and two,  
20 suffers from a mental abnormality or personality  
21 disorder that makes him more likely to commit  
22 another offense. In support of our case, the State  
23 would contend that Mr. Russell has, in fact,  
24 committed a sexually violent offense and has been  
25 convicted for those acts. In fact, we would contend

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1           that he has been convicted of three, separate,  
2           sexually violent offenses. Against, three separate,  
3           child victims. We will contend that the evidence  
4           will show today that he was convicted of sexually  
5           assaulting a four year old girl, a two year old girl  
6           and a five year old boy. That he pled guilty to  
7           each of these crimes. Now, I won't go into the  
8           details of these offenses at this time, but I must  
9           tell you, the details of these crimes will come out  
10          during testimony today, and these cases, by their  
11          very nature contain graphic, sometimes, things that  
12          we wish that we didn't have to speak about. So, I  
13          want to advise you that you will hear things today  
14          which you may not like to hear. Now, the second  
15          prong of the Sexually Violent Predator Act, as I  
16          stated, is that Mr. Russell also has to have a  
17          mental abnormality or personality disorder that  
18          makes him more likely to commit acts of sexual  
19          violence. Today, you will hear testimony from Dr.  
20          Peggy Wadman who is seated here in the front row of  
21          the courtroom. She is a psychiatrist who was ordered  
22          by the Court to conduct an evaluation into that very  
23          question. Does he have a mental abnormality or  
24          personality disorder? And is he more likely to  
25          commit acts of sexual violence? You will hear

1           today, and she will testify, that after evaluating  
2           Mr. Russell, she did find that he does suffer from  
3           Pedophilia and that he lacks a control over this  
4           Pedophilia, such that he will commit other acts of  
5           sexual violence. However, as the judge will instruct  
6           you and has instructed you, you don't have to  
7           believe one hundred percent of what she says. Listen  
8           to her testimony, you will get to decide. You  
9           yourselves will get to decide whether or not Mr.  
10          Russell does lack that control. Listen to the  
11          details, listen to the evidence as we present it.  
12          Not just the evidence from the State, but any  
13          evidence that Mr. Shepherd and Mr. Russell might  
14          place before you. We thank you, the Attorney General  
15          thanks you for being here today. This is a very  
16          difficult question, these are not pleasant cases and  
17          we thank you for your time and taking your  
18          responsibility that our Constitution invests with  
19          you in answering those questions of fact. Thank you.

20       The Court:           Mr. Shepherd any statement at this time?

21       Mr. Shepherd: Yes sir.

22       The Court:           Alright.

23       OPENING STATEMENT OF Mr. SHEPHERD:

24       Mr. Shepherd: Ladies and gentlemen, you heard the State.

25               What qualifies as a sexually violent predator under

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1 the act? Before we get into that, let's take a good  
2 look over here at Mr. Russell. He's sitting over  
3 there in his shackles and his prison garb. Sexually  
4 Violent Predator statute is a civil commitment. It  
5 is not a criminal trial, it is whether or not this  
6 individual should be locked away for long term care  
7 and treatment in a protected facility. The State is  
8 saying that Mr. Russell meets that criteria for two  
9 reasons. One, he pled guilty to three counts. Two,  
10 they have an expert who said he matches that  
11 criteria. A psychological, psychiatric perspective.  
12 What our evidence is going to show you is that the  
13 State, that now wants to put Mr. Russell into long  
14 term care and treatment for a period indeterminate,  
15 we have no idea when he'll get out except for when  
16 the physicians say they feel that he can be  
17 released. So the same State that is now trying to  
18 say that this is a dangerous, sexually violent  
19 predator, is also the same State that came to Mr.  
20 Russell when he faced a forty five year sentence or  
21 more and said, We'll let you out with three years  
22 credit for time served, subject to some probationary  
23 period, that you get treatment, out patient  
24 treatment. That you are subject to certain criteria  
25 that you cannot be around drugs, alcohol, minor

1 children. And what the State's expert does not do is  
2 the State's expert doesn't look at those factors.  
3 The factors of the probation, the factors of what  
4 would be some level of control after Mr. Russell was  
5 released. He maxed out in March of 2011. He pled  
6 guilty in November 2010. Where is the disconnect  
7 with the State to say that now he is a sexually  
8 violent predator, he's got to be locked away for an  
9 indefinite period of time when the State's willing  
10 to come forward and say well, you've already served  
11 this much time waiting on trial, now you can be  
12 released, but as long as you're subject to these  
13 terms of probation, it's okay. You're not a danger  
14 at that point. But that's on the criminal side and  
15 now we're on the civil side. But that's what our  
16 evidence is going to show. Our evidence is going to  
17 show that the State's expert and reliance on an  
18 assessment done on Mr. Russell prior to his plea  
19 deal. The State's expert relied on a, on a, on an  
20 assessment that in numerous places found that Mr.  
21 Russell was a low to medium risk, low to nominal  
22 risk. Using all different batteries of assessment.  
23 It finds that Mr. Russell is a current high risk.  
24 We're going to put on testimony to explain why the  
25 person that did that assessment felt that he was a

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1 current high risk. And you'll see, which is our goal  
2 here, that Mr. Russell's probation, the terms of  
3 supervision, the terms of out patient, mandatory  
4 treatment are enough to protect us and to protect  
5 society from anything that the State claims he is  
6 going to go out and do. Your burden is going to be  
7 beyond a reasonable doubt. As you listen to the  
8 testimony, you got to listen, you got to think hard.  
9 We've got a guy who the State said it's okay if he  
10 walks, he served his time waiting on trial. It's  
11 okay if he walks subject to the terms of his  
12 probation and then they come back on the civil  
13 commitment side and say we can lock him away and we  
14 should lock him away for an indeterminate period of  
15 time. They are going to argue, well it's typically  
16 the standard length of time, but we don't know. It's  
17 not measurable. We don't have an actual sentence. So  
18 here we have a guy, sitting here who maxed out, who  
19 should be home, serving under the terms of his  
20 supervision, receiving the treatment that he was  
21 ordered to take, the terms of his probation and he's  
22 still sitting in jail, could be going on your  
23 shoulders, for involuntary commitment for treatment,  
24 because now he is a sexually violent predator.  
25 Again, one that was freed when the State gave a plea

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1 deal to walk in just a couple of months. That's the  
2 stuff you're going to have to consider. You've got  
3 to look for reasonable doubt. We're going to go  
4 through Dr. Wadman, her assessment and her opinion.  
5 We're going to go through Dr. William Burke's  
6 assessment of Mr. Russell and as you listen to the  
7 differences of opinion, they're going to agree in  
8 some places, they're going to disagree in some  
9 places. But you've got to look at what these  
10 experts, the professionals have said, does it raise  
11 a reasonable doubt? That's the State's burden. This  
12 is a case of reasonable doubt. You're going to see  
13 it. You're going to feel it. You're going to know  
14 it. You're not going to feel comfortable with any  
15 decision that you make in this case; you're always  
16 going to look back and say did I do the right thing?  
17 But when you tear apart and look at these  
18 assessments and you think about, the two positions  
19 that the State's now taking are has taken at this  
20 point. There's some reasonable doubt. We just ask  
21 you to keep an open mind. Look past the prison garb,  
22 look past the shackles. That man is no longer  
23 serving a criminal sentence. That's what we want you  
24 to see is that he's still sitting there, he could  
25 still be subject to being shackled under a civil

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1 commitment process. Please think long and hard and  
2 thank you for your time.

3 The Court: Alright, thank you. Mr. Flores you can  
4 call your first witness..

5 Mr. Flores: Thank you Your Honor. The State would call  
6 Dr. Peggy Wadman.

7 The Court: Alright, raise your right hand and state  
8 your name please.

9 Dr. Wadman: Dr. Peggy Wadman.

10 The Court: Do you swear the testimony that you will  
11 give to this Court will be the truth, the whole  
12 truth and nothing but the truth, so help you God?

13 Dr. Wadman: I do.

14 The Court: Alright, please have a seat. If you would  
15 please ma'am have a seat and give your full name to  
16 the Court Reporter and spell your last name.

17 Dr. Wadman: It's Dr. Peggy Wadman. W-A-D-M-A-N.

18 DIRECT EXAMINATION OF DR. Wadman BY MR. FLORES:

19 Q: Good afternoon Dr. Wadman.

20 A: Good afternoon.

21 Q: Dr. Wadman, how are you currently employed?

22 A: I am currently employed as the forensic medical  
23 director for the South Carolina Department of Mental  
24 Health.

25 Q: And what professional degrees do you currently

1 possess?

2 A: I graduated with an undergraduate degree and then  
3 went to medical school and did four years of medical  
4 school and when we got out, or about to graduate, we  
5 had to pick out a specialty, and I picked the  
6 specialty of psychiatry. And then I went through  
7 four years as psychiatric residency in adult in  
8 general and then I did one more year of forensic  
9 fellowship and after that I took examinations, oral  
10 and written examinations and board certified in  
11 general psychiatry and also forensic psychiatry.

12 Q: Doctor you used a lot of terms there and sometimes I  
13 don't understand what they mean. What is the study  
14 of psychiatry?

15 A: Psychiatry is the study of medicine and the brain  
16 and so where as a cardiologist would be an expert in  
17 heart, a urologist deals with anything pertaining to  
18 the urinary tract, a psychiatrist actually practices  
19 medicine, so I actually prescribe medication and I  
20 do testing and order tests and labs and what not and  
21 I look at different disorders of the brain and then  
22 more specifically, to go into forensic psychiatry,  
23 you look at matters that pertain to the brain and  
24 the law. So the interface between psychiatry and  
25 the law. So some of the things that a forensic

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1        psychiatrist does is they might, somebody might be  
2        charged with a crime and the forensic psychiatrist  
3        would look to see if they were suffering from a  
4        mental disorder when they committed the crime and  
5        how that may have played into the committing of that  
6        crime and whatnot. So and then there's also  
7        different situations like this, where we might  
8        evaluate someone to see if we think that they meet  
9        the qualifications for going into the sexual  
10       predator program.

11      Q:    Now, you briefly described the board certification  
12           process. Is that something that every psychiatrist  
13           or psychologist might be required to do?

14      A:    If they want to be board certified and anymore, most  
15           hospitals and most states are going to requirements  
16           for board certification, generally when the boards  
17           are offered, about half of the people will take it,  
18           pass the boards.

19      Q:    Doctor have you previously been recognized and  
20           testified as an expert witness in forensic  
21           psychiatry and the Court's of law in this state?

22      A:    Yes I have.

23      Q:    On approximately how many occasions have you done  
24           so?

25      A:    Probably more than a hundred times.

1 Q: And have all of your, out of all the times that  
2 you've testified, have you always testified for the  
3 State in these cases?

4 A: No, not always.

5 Q: Your Honor at this time we would ask that Dr. Wadman  
6 be recognized as an expert in the field of forensic  
7 psychiatry.

8 The Court: Any questions at this time?

9 Mr. Shepherd: No objections.

10 The Court: Alright, the witness is qualified as an  
11 expert in the field of forensic psychiatry. Ladies  
12 and gentlemen, if I can have your attention in that  
13 regard for just a few minutes. Typically, there are  
14 two types of witnesses who testify. They are lay  
15 witnesses and there are expert witnesses. Typically  
16 when a witness testifies that witness can only  
17 testify to what they saw or heard or smelled or  
18 touched. Again, those are called lay witnesses.  
19 Those folks, those kinds of witnesses cannot give  
20 opinions. There is an exception in our rules of  
21 Evidence where someone who is qualified by  
22 education, training or experience in a particular  
23 field, that type of witness can give opinions and  
24 can give the reasons for those opinions. That does  
25 not mean, however, that you are bound by the opinion

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1 just because it comes from an expert. You are  
2 required to evaluate and weigh this witnesses  
3 testimony and give it the weight that you think it  
4 deserves.

5 Q: Doctor, how did you become involved in this specific  
6 case?

7 A: I received an order by the court to conduct an  
8 examination and so every county, the judge, they'll  
9 have, they'll have what's called a probably cause  
10 hearing to see if there's cause to believe that the  
11 person might be a sexual predator and then they're  
12 evaluated by a psychiatrist who's appointed by the  
13 court. So, I you know like in some cases where I  
14 might be hired by either side and in this case I'm a  
15 neutral party, appointed by the court.

16 Q: Doctor, what type of evaluation did you conduct of  
17 Mr. Russell for this case?

18 A: I conducted a forensic evaluation that consisted of  
19 meeting with him personally to do an extended  
20 interview, also looking over all the legal documents  
21 related to the case so those would be the arrest  
22 warrants, the indictments, victim's statements,  
23 statements or basically examinations by the doctors  
24 who examined the children and in this case, we look  
25 at his medical records and also any psychiatric

1 records that he might have. His prison records; he  
2 was in prison a very short time, so there weren't  
3 very many of those, so but I would look at those and  
4 any other testing that was done by any other  
5 consultants.

6 Q: Were you paid to conduct this evaluation?

7 A: No I was not.

8 Q: And as part of that evaluation you just mentioned  
9 that you sat down and interviewed Mr. Russell. Would  
10 you identify Mr. Russell?

11 A: Yes, he's sitting with his attorney at that table.

12 Mr. Flores: Your Honor we would just ask the record  
13 reflect that Dr. Wadman identified Mr. Russell.

14 Q: Doctor, when you were asked to conduct an evaluation  
15 in this type of case, what is it that you do  
16 specifically? What is your protocol?

17 A: My protocol is to first review all of the available  
18 records that I have and then I meet with the  
19 respondent and evaluate them, and talk to them.  
20 Sometimes I order more testing, sometimes if  
21 testing's already been done that's available, I'll  
22 review that. I'll just look through and make sure  
23 that they meet the criteria or that they have the,  
24 the legal convictions, which he did have three  
25 convictions for lewd act on a minor. And then form

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1 an opinion and write a report.

2 Q: Doctor, as part of this evaluation, how many  
3 occasions did you have a chance to sit down and  
4 speak with Mr. Russell?

5 A: I spoke with him one time. I met with him on March  
6 25, 2011.

7 Q: In addition to meeting with Mr. Russell, what was  
8 the type of information that you received to conduct  
9 your evaluation for this case?

10 A: Well, I, I received his, all of the legal documents,  
11 which would include the arrest warrants, the  
12 victims' statements, statements from the parents,  
13 medical exams of the children, I look, received a  
14 report from the Dr. William Burke who had done a lot  
15 of testing on Mr. Russell before he was actually  
16 convicted of the crimes. And did some assessments of  
17 my own.

18 Q: Is this the type of information that is typically  
19 and reasonably relied upon by other experts in your  
20 field?

21 A: Yes, it is.

22 Q: At the time you conducted your interview and  
23 evaluation, was there any information you could not  
24 obtain?

25 A: No, not at that time.

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1 Q: And did you consider and rely on all of this  
2 information you listed for the jury just a moment  
3 ago and upon your interview with Mr. Russell in  
4 rendering an opinion in this matter?

5 A: Yes, I did.

6 Q: Doctor, why did you rely on information regarding  
7 Mr. Russell's criminal history in reaching your  
8 opinion?

9 A: Well, a person's past is probably the best predictor  
10 of what somebody will do in the future. They call  
11 that the single, most powerful predictor. If a  
12 person has committed sexual offenses in the past,  
13 then he's more likely to commit sexual offenses in  
14 the future. And also to see if there was just  
15 general criminality, general anti-social behavior,  
16 any crimes of violence in his past, anything like  
17 that.

18 Q: Now, you've already testified that Mr. Russell had  
19 been convicted of three counts of committing a lewd  
20 act on a minor. Are these offenses, to which Mr.  
21 Russell has convictions, are they listed as sexually  
22 violent offenses?

23 A: Yes, they are.

24 Q: If I may approach the witness Your Honor?

25 The Court: Yes sir.

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1 Q: I'm going to hand you what's been marked as  
2 Plaintiff's exhibit number 3.

3 A: Yes.

4 Q: I'm going to ask you to just review that for a  
5 moment. Doctor, can you describe what those  
6 documents are?

7 A: This is an indictment for lewd act for committing or  
8 attempting a lewd act on a child under sixteen. This  
9 was dated, this was on or about November 2<sup>nd</sup>, 2008.  
10 It involved a four year old girl and this is the  
11 sentencing sheet that goes with that.

12 Q: And how do you know that those are, in fact, true  
13 copies?

14 A: They have the stamp and they're certified.

15 Q: Doctor, as part of your evaluation, did you learn  
16 the details underlying this particular offense?

17 A: Yes, I did.

18 Q: And could you relay, could you tell the jury what  
19 happened in this offense, in this particular  
20 offense?

21 A: This particular offense involved a four year old  
22 child that lived next door to Mr. Russell. The  
23 records indicated that some time between two a.m.  
24 and three thirty a.m. on November 2, 2008, he  
25 entered the home of his neighbor and sexually

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1 assaulted the four year old girl by performing oral  
2 sex on her and placing his penis against her vaginal  
3 and/or her anal area. The victim told her mother  
4 that Mr. Russell had woken her by placing his hand  
5 over her mouth and the records documented that he  
6 then touched her vaginal area with his hand and his  
7 mouth and exposed himself to her, by placing his  
8 penis on her vagina. She told her mother that she  
9 told him no several times and he kept doing it until  
10 she started crying and then he left her room. Once  
11 he left the room, there are various accounts that  
12 were given by Mr. Russell. He basically said that he  
13 was discovered in the house and he told the child's  
14 father that he was just there to apologize to him  
15 for an incident that happened a few days earlier; it  
16 was somewhere around two thirty in the morning. And  
17 the victim's father made him leave the house and in  
18 the meantime, the little girl was crying and told  
19 her mother that he had molested her. They were there  
20 in the house still and they heard a sound coming  
21 from the girl's bedroom and the father went into the  
22 girl's bedroom and saw Mr. Russell coming back  
23 through the bedroom window after he'd already been  
24 escorted out of the house and the victim's father,  
25 of course when he approached Mr. Russell, went

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1 outside in the yard and shoved him out the gate of  
2 the property and watched him go home.

3 Q: Now Doctor, according to the sentencing sheets, did  
4 Mr. Russell go to trial on this charge?

5 A: He was, he actually took a plea bargain is my  
6 understanding. He was originally charged with  
7 criminal sexual conduct with a minor and burglary  
8 first degree and he pled to lewd act.

9 Q: At this time, Your Honor, we would move, the State,  
10 the Plaintiff's exhibit 3 into evidence.

11 The Court: Any objection?

12 Mr. Shepherd: No sir.

13 The Court: Alright.

14 (Plaintiff's Exhibit Number 3 was put into evidence)

15 Q: If I may approach again Your Honor? Doctor Wadman,  
16 I'm going to hand you what's been marked Plaintiff's  
17 exhibits 1 and 2 and ask that you review these.

18 A: Okay, these, these are sentencing sheets, okay these  
19 are, these are arrest warrants, sentencing sheets  
20 and indictments for two, two more victims. The first  
21 set occurred in November 2008. These occurred in May  
22 of 2009. One was a two year old girl and one was a  
23 five year old boy.

24 Q: And is there any notation to indicated the  
25 authenticity of these documents?

1 A: Yes, they're certified copies.

2 Q: Doctor, would you please describe for the jury the  
3 details underlying these specific acts?

4 A: Okay, regarding the situation with these, Mr.  
5 Russell was out on bond. He was out of jail on bond.  
6 He was wearing an ankle bracelet and he was supposed  
7 to be living with his uncle and he had a curfew to  
8 follow. Apparently, he had some type of falling out  
9 with his uncle and over the curfew, he wasn't making  
10 the curfew or coming in on time and he was either,  
11 either left the house or was kicked out of the house  
12 and he eventually ended up living with the, the  
13 parents or at least the mother and the boyfriend of  
14 these children here. So, he moved into their house  
15 with an ankle bracelet and he had already been  
16 released on bond for the pending charge of criminal  
17 sexual conduct with a minor. And shortly after he  
18 was there at the house, it was discovered that the  
19 little girl told her mother, after the mother had  
20 found child pornography on her computer and, and  
21 became very concerned, because the mom told police  
22 that it wasn't hers and it didn't belong to her  
23 boyfriend. And so, she asked her daughter had  
24 anyone been doing anything to her. The daughter said  
25 that Mr. Russell had been digitally, not in the

1 words of the two year old, but basically digitally  
2 penetrated her vagina and then the little boy also  
3 said that he had fondled him on at least one  
4 occasion and the mother called the police and  
5 subsequently there was an investigation and the  
6 children were taken to the special children services  
7 where they conduct the interview and the examination  
8 and he was arrested. I believe the original charge  
9 was, one of the original charges was criminal sexual  
10 conduct with a child. He ended up pleading guilty to  
11 two counts of lewd act. One for the two year old and  
12 one for the five year old.

13 Q: Your Honor at this time we'd offer Plaintiff's  
14 exhibits 1 and 2 into evidence.

15 Mr. Shepherd: No objection.

16 The Court: Alright.

17 (Plaintiff's One and Two were marked)

18 Q: If I may approach? Doctor, what is significant  
19 about these offenses with regard to your opinion?

20 A: Well, what was concerning about Mr. Russell and his  
21 behavior, there are sex offenders who certainly  
22 score higher on the risk assessment similar to mine,  
23 but what was significant about Mr. Russell was that  
24 incredible level of impulseitvity and inability to  
25 control his behavior. The fact that he would molest

1 a little four year old girl and then the father  
2 confronting him in the house and kicked him out of  
3 the house and then going into the child's bedroom  
4 and finding him coming back through the window. That  
5 shows a real level of impulseitivity and inability  
6 to control his behavior. Then he got out on bond and  
7 had an ankle bracelet and moves into the home of a  
8 couple who have two small children and then molests  
9 those two children. And so, the, the lack of  
10 judgment, the lack of ability to say no to his  
11 impulses, no to even understand how really crazy  
12 that is. To be out of jail on a bond with an ankle  
13 bracelet and move into the house with two young  
14 children there and then also molest those two  
15 children. So I just think, given that and plus the  
16 fact that the other risk factors, he has risk  
17 factors of substance use and abuse makes him likely  
18 to sexually re-offend. That's what we're looking at,  
19 somebody who is likely to sexually re-offend.

20 Q: I want to talk to you a little bit about risk  
21 factors you just mentioned. What are risk factors?

22 A: Risk factors are just different things that make a  
23 person more likely or less likely to do something.  
24 So, in other words, what we do in this business is  
25 we have different assessments that we use to

1 determine how many risk factors does this person  
2 have. So in his case, risk factors for sexual  
3 offenders would be how many sex offenses have they  
4 been convicted of in the past. You know, the more,  
5 the more they've been convicted, the higher risk  
6 they would be in that sense. The literature,  
7 scientific literature, when we study things like  
8 this shows if somebody molests a male child they're  
9 at higher risk; if the child was unrelated to them,  
10 they're at higher risk; if, if, if any of the  
11 children were strangers, they're higher risk. None  
12 of his were strangers. If they have prior non sexual  
13 violence convictions they're higher risk; if they  
14 never lived in a committed relationship with a, you  
15 know, a woman or man or whatever, a loving  
16 relationship for two years, less than two years or  
17 never, that's a higher risk. Mr. Russell's never  
18 been married. He's never lived with a woman  
19 continuously in over two consecutive years. The  
20 literature shows that that makes him a higher risk.  
21 The younger somebody is when they sexually re-offend  
22 the higher risk they are. So those are the types of  
23 things that we look at.

24 Q: Doctor, as you were describing the information you  
25 relied on in rendering your opinion in this matter,

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1 the police reports, the documents which you've just  
2 described, you also mention an assessment or  
3 assessments that were done. Was there an assessment  
4 that you conducted specifically?

5 A: Yes. I, I code something called the Static 99  
6 revised and what that is, and again, in this field  
7 of sexual offender research, they come up with  
8 different instruments to see how much of a risk is  
9 this person to re-offend. They'd pull out their own  
10 assessment, their own actual assessment and they'd  
11 start asking you questions and they'll say have you  
12 ever, do you smoke? Have you ever been a smoker?  
13 Have you ever had cancer? Has anyone in your family  
14 ever had cancer? Do you drink accessibly? You know,  
15 how many medications are you on and the more you  
16 answer yes to those, you know, if you answer yes I'm  
17 a smoker, my family smokes, I grew up in a smokey  
18 household, you know, I drank a fifth a week, you  
19 know, I, you know, I don't exercise, all these,  
20 they're going to go well, yeah, maybe we can insure  
21 you, but it's going to cost you an arm and a leg  
22 right? Because you're a high risk, you're a higher  
23 risk for the insurance company. That's the same  
24 thing that we do with sex offenders. The higher they  
25 score on these instruments, the higher risk that we

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1 think that they are.

2 Q: And you scored one of these assessments for Mr.  
3 Russell?

4 A: Yes, I did.

5 Q: Okay, what did that assessment tell you?

6 A: The assessment told me that he is in the moderate  
7 high risk category. He's not the highest, he's not  
8 the highest risk category, but this is just one of  
9 the things that we look at. A lot of the people that  
10 we commit to the program will score very, very high  
11 on these instruments. He scored moderately high. But  
12 as I said before, this is just one part of the  
13 assessment. What concerned me so much about Mr.  
14 Russell was the, the risk taking and the high level  
15 impulseitivity and lack of judgment that he showed.  
16 Not just in committing his first sex offense that we  
17 know about, but the two that followed and so based  
18 on that, that was the most concern for me.

19 Q: Doctor, I recall you stating in your testimony that  
20 you relied upon another evaluation and some  
21 assessments or tests that were conducted by Dr.  
22 William Burke.

23 A: Yes, I did.

24 Q: Why did you, why did you rely on those particular  
25 tests and that evaluation?

1 A: On Dr. Burke's evaluation?

2 Q: Yes.

3 A: Well. Dr. Burke did something called a PPG. That's  
4 a test, that's a little more evasive. What it does  
5 is they hook up a gauge, it's called a strain gauge  
6 to a man's penis and there are other tracers; they  
7 trace their respiratory rate and there's something  
8 in the seed that tells whether they're trying to  
9 suppress an erection and then basically, they show  
10 them and the person sees and hears images of  
11 children, adults, males, females, you know, some  
12 corrosive, some just normal and they kind of measure  
13 their sexual response to those. And the reason that  
14 I thought that Dr. Burke's report was significant,  
15 even though he had only given it to, in draft form,  
16 what I noticed first was that at the top of the  
17 assessment it said this is a draft. You know, it  
18 wasn't a final copy, so I actually called him on May  
19 6<sup>th</sup>, 2011 and went through the report with him,  
20 because I wanted to clarify what were his final  
21 conclusions versus just what were the preliminary  
22 findings that he had and one of the things that  
23 struck me in his evaluation on the PPG, was that the  
24 highest, the highest sexual arousal Mr. Russell had  
25 was to a female child in the persuasive. Meaning

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1           it's not necessarily voluntarily persuasive, you  
2           know, just normal voluntary and persuasive and then  
3           coercive, it gets more violent. But that was his  
4           highest level of response. He also responded to  
5           adult females and teenage females, which is normal.

6       Q:    Doctor, was there any other information upon which  
7           you relied in rendering your opinion in this matter?

8       A:    No, you know, other than the information in Dr.  
9           Burke's report. He found, Dr. Burke found the same  
10          thing that I found in the interview, is you know,  
11          one of the things, one of the tests showed that he  
12          had a high level of inattention and impulseitvity  
13          and that clearly came across in the interview and it  
14          clearly came across in his recorded history,  
15          especially the history of the crimes.

16       Q:    Doctor, based on your examination of Mr. Russell,  
17           the review of his records, all these factors that  
18           we've been discussing over these last few moments,  
19           did you render an opinion to a reasonable degree of  
20           medical certainty as to whether Mr. Russell has a  
21           mental abnormality or personality disorder?

22       A:    Yes I did.

23       Q:    And what was that opinion?

24       A:    I diagnosed him with pedophilia and non exclusive  
25           type. The reason I did that is because he's also had

1 sexual relationships with adult females. That in  
2 itself is not unusual. Most people who do molest  
3 children, they don't necessarily just prefer  
4 children, they have relationships with adults and  
5 also they can have deviant sexual arousal to  
6 children. I also diagnosed him with polysubstance  
7 dependants alcohol and cocaine, also a history of  
8 ecstasy abuse. He reported that he use to abuse  
9 ecstasy almost every weekend for a three or four  
10 year period. The same with cocaine and he also had a  
11 history of a head injury, which was concerning to  
12 me.

13 Q: Doctor, can pedophilia be treated?

14 A: Yes, it can.

15 Q: Is it a life long condition?

16 A: Yes, if somebody has pedophilia, it's life long.

17 There's no cure for it, but there is treatment.

18 It's someone like alcoholism, someone who is an  
19 alcoholic or alcohol dependant, they never really  
20 get over that. They'll always be susceptible to it,  
21 but they can live a life of sobriety. Most  
22 pedophiles actually don't offend against children.

23 They live with it, they control it, they can control  
24 it, but a lot of times they have to learn in  
25 treatment how to control it.

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1 Q: Now, Doctor, you've mentioned that Mr. Russell has a  
2 history of drug and alcohol abuse. Did drugs and  
3 alcohol play a role in his committing the offenses  
4 that he did?

5 A: He told me that he had not used alcohol or drugs for  
6 the two years prior to his arrest. The father of one  
7 of the victims, the night that he broke into the,  
8 into the home and molested the four year old said  
9 that he was drunk. So, you know, based on what Mr.  
10 Russell told me, he did this sober. Based on what  
11 the father of one of the victim's said, he was at  
12 least intoxicated on the one child. But there's no  
13 indication he was intoxicated when he committed the  
14 acts against the other two children.

15 Q: Doctor, at this time, do you have an opinion as to a  
16 reasonable degree of medical certainty as to whether  
17 Mr. Russell's pedophilia effects his emotional or  
18 volitional capacity so that he is pre disposed to  
19 commit future, sexually violent offenses?

20 A: Yes, I do.

21 Q: And what is that opinion?

22 A: I believe he is pre disposed.

23 Q: And why is that?

24 A: Just based on his history, and his risk factors and  
25 the behavior that he's already exhibited and

1 especially the behavior that he exhibited when he  
2 was out of jail on bond with an ankle bracelet on.

3 Q: Doctor, do you have an opinion to a reasonable  
4 degree of medical certainty as to whether Mr.  
5 Russell has the propensity to be dangerous and  
6 commit future sexual violent offenses?

7 A: Yes, I believe that he does have that propensity.

8 Q: Doctor, do you have an opinion to a reasonable  
9 degree of medical certainty as to whether Mr.  
10 Russell's propensity to commit future sexually  
11 violent offenses is of such a degree that it poses a  
12 menace to the health and safety of others?

13 A: Yes, I do. I believe it does.

14 Q: Doctor, do you have an opinion to a reasonable  
15 degree of medical certainty as to whether Mr.  
16 Russell has serious difficulty in controlling his  
17 behavior and his propensity is to be dangerous?

18 A: Yes, I think that he does have serious difficulty  
19 controlling his behavior.

20 Q: Doctor, do you have an opinion to a reasonable  
21 degree of medical certainty as to whether Mr.  
22 Russell's Pedophilia makes him likely to engage in  
23 acts of sexually violence if he is not confined in a  
24 secure facility for long term control, care and  
25 treatment?

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1 A: Yes, I do think he has the propensity towards that.

2 Q: And Doctor, at this time do you have an opinion as  
3 to a reasonable degree of medical certainty as to  
4 whether Mr. Russell meets the legal criteria to be  
5 found to be a sexually violent predator?

6 A: Yes, I believe that he meets the legal criteria.

7 Q: Doctor, if the jury were to find Mr. Russell to be a  
8 sexually violent predator, and commit him, would he  
9 be offered treatment for his Pedophilia?

10 A: Yes, he would. He would go to a treatment program  
11 that's operated by the South Carolina Department of  
12 Mental Health. It is, the program is separate from  
13 the prison system, but it is located within the  
14 fence of the Broad River Road Correctional  
15 Institution. Its employees though and security are  
16 through the Department of Mental Health and Office  
17 of Public Safety. And then they go into the program  
18 for treatment and once a year they have a review to  
19 see whether their condition is so changed that  
20 they're considered to be safe to be at large.

21 Q: Beg the Court's indulgence.

22 The Court: Alright.

23 Q: Doctor, that's all the questions I have for you at  
24 this time. Please answer any questions that Mr.  
25 Shepherd might have for you.

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1 The Court: Alright Mr. Shepherd.

2 CROSS EXAMINATION OF DR. WADMAN BY MR. SHEPHERD:

3 Q: Hi Doctor Wadman. Now Dr. Wadman, you said that you  
4 did meet with Bobby Russell as part of your  
5 evaluation?

6 A: Yes, I did.

7 Q: Okay. You met with him for a total of about two  
8 hours?

9 A: I believe it was two hours, yes.

10 Q: And you reviewed evidence provided to you by whom?

11 A: By, well the package comes from our Paralegal. I  
12 don't know exactly where she compiles that from, but  
13 it has all of his police documents so it would have  
14 come from Dorchester County police. I can tell you,  
15 from the Department of Corrections.

16 Q: Uh-huh.

17 A: Copies of his records there, copies from the  
18 children's services and Palmetto Health.

19 Q: Okay, was there any effort on your part to obtain  
20 information from say, Mr. Russell's family or  
21 defense attorneys?

22 A: Yes. I actually interviewed some other over the  
23 telephone and I got some information from his, from  
24 his criminal attorney.

25 Q: Okay, did any of the information from Mr. Urekco's

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1 office make it into your report?

2 A: Yes it did. It, what they sent me was a copy of a  
3 report from, they sent me a copy of Dr. Burke's  
4 report.

5 Q: Uh-huh.

6 A: They sent me a copy of some prescriptions for  
7 medications. They sent me a copy of the report from  
8 SLED, a lab report.

9 Q: Uh-huh, did you obtain any evidence that might  
10 suggest that no DNA was found on, Mr. Russell's DNA  
11 was never found on the first child in your report?

12 A: They sent some type of lab report from SLED, but I  
13 didn't really look at it too closely, because he had  
14 already confessed to that crime.

15 Q: Did you receive any information to indicate that Mr.  
16 Russell's were never found on that window that he  
17 was allegedly pushed out of?

18 A: Let me look through this real quick. No, I don't  
19 see that.

20 Q: Okay and did you receive any information regarding  
21 Mr. Russell having taken a polygraph test with  
22 regards to the allegations that were against him to  
23 which he ultimately pled?

24 A: He's mentioned that he had taken a polygraph  
25 examination, but I do not have the results from

1           that.

2       Q:    Okay, if the polygraph came back in his favor, would  
3           that have effected your report to some degree?

4       A:    Again, the fact that polygraphs I don't think are  
5           admissible in criminal court, I guess, I don't know,  
6           I don't know the rules of the law on that, but the  
7           fact that he confessed to the crime and pleaded  
8           guilty to it, I weighed that more heavily.

9       Q:    Okay. Did you receive any reports regarding child  
10          pornography on the computer that would verify that  
11          the child pornography was on the computer several  
12          months before Mr. Russell ever lived in that home  
13          with those two children?

14      A:    I didn't receive any reports on the status of the  
15          pornography.

16      Q:    Okay. When you conducted the Static 99, you found  
17          that Mr. Russell was in the moderate to high  
18          category, correct?

19      A:    Yes.

20      Q:    Okay, can you explain to us how your Static 99  
21          differs from that of Dr. Burke on who's report you  
22          did rely on?

23      A:    Well, when I spoke with Dr. Burke and we actually  
24          briefly discussed that, he acknowledged at that time  
25          on the phone I believe that he, he wasn't aware of

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1 his relationship status and again, Dr. Burke's  
2 report was just a draft. You know, it wasn't, it  
3 wasn't his final copy. So I think at that point he  
4 hadn't gone through the records or verified whether  
5 he had in fact, had the two year plus relationship,  
6 which he had not. So I think that was where our  
7 scores differ.

8 Q: Okay. Alright, did you take into account any dynamic  
9 factors like the effect of treatment and supervision  
10 with regards to the Static 99?

11 A: He hadn't had any treatment.

12 Q: Did you offer any opinions as to how his score might  
13 be effected through treatment and proper  
14 supervision?

15 A: No, one of the things, you know, on his sentencing  
16 sheet it did say that, you know, he had been on  
17 probation for five years, he couldn't have any  
18 contact with children. You know, it went through a  
19 number of things that he would have to meet before  
20 he could get out of or he could be released on  
21 probation and I certainly look at that. I think it's  
22 a good, you know, it does something that can work in  
23 somebody's favor, but the reason it didn't work in  
24 his is because he was released on bond for his first  
25 offense against a child and he promptly broke the

1 condition of his bond and moved into a house with  
2 two young children in it and then sexually offended  
3 against those two children. So, it really wouldn't  
4 matter that he were out on probation or out on bond,  
5 because he already proved, at least to me, that he  
6 couldn't be trusted to maintain those conditions of  
7 probation.

8 Q: And your basing that solely off the fact that he  
9 pled guilty?

10 A: Yes.

11 Q: Okay. Alright, not on any incidents of the child  
12 pornography, not being on the computer when he was,  
13 or being on the computer before he ever lived in the  
14 house?

15 A: Well, I actually I, let me re-state that. I base it  
16 not just on the fact that he pleaded guilty, but  
17 also on the statements of the children, of three  
18 different children; a two year old, a five year old  
19 and a four year old to trained interviewers of  
20 children who have been molested and the children, I  
21 read through those interviews and they, they all  
22 maintained in their own words, as only young  
23 children can do, that he molested them. So, based on  
24 all of that I believe that he did molest the  
25 children.

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1 Q: Do you have any thoughts with regards to the other  
2 battery of tests performed by Dr. Burke that placed  
3 him in the low nominal risk category for violent  
4 recidivism?

5 A: I remember that he was in the highest risk category  
6 when they scored them all together; that's all I  
7 remember. But again, I don't know how Dr. Burke  
8 scores those, but I understand that he's here and  
9 will probably be able to answer those questions for  
10 you.

11 Q: Well, Dr. Wadman, you relied on that for your  
12 report.

13 A: No, I relied, what I, what I said was I, I looked at  
14 his PPG results, a lot of times I look at the PPG.  
15 When he says that, he said that the, that combining  
16 all of the tests that, which Dr. Burke says and  
17 again, this is his report, he then places him as a  
18 high current risk priority for sexual violent  
19 recidivism. I'm reading that right here. Places him  
20 as a high risk priority.

21 Q: After a combination of all tests, correct?

22 A: Yeah.

23 Q: Did all of those tests find him in a low to medium  
24 or low to nominal?

25 A: You know, again, I did not cite those in my report.

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1 I would have to go back through his report.

2 Q: Okay.

3 A: He can certainly, you know, talk about that.

4 Q: Okay. Did you make an reference in your report to  
5 Dr. Burke's finding that Bobby Russell does not show  
6 an interest in sadistic behavior?

7 A: I doubt, where did you find that? I don't see it.

8 Q: I can reference you to, it would be page eight.

9 A: Page eight?

10 Mr. Flores: Which report is Mr. Shepherd referring to?

11 Mr. Shepherd: Dr .Burke's.

12 Mr. Flores: Dr. Burke's. Okay.

13 A: Again, where is that?

14 Q: May I approach the witness Your Honor?

15 The Court: Yes.

16 Q: Dr. Wadman, I'm going to show you this. That is  
17 respondent's Two.

18 A: This is South Eastern Assessments, Inc. This is a  
19 report by Dr. Burke.

20 Q: Okay.

21 A: It says draft.

22 Q: Okay, is that the report that you relied upon?

23 A: That's the report that I got the PPG from, the  
24 results from, yes.

25 Q: Okay, did you look at any other information in that

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1 report?

2 A: I looked at it, but I don't use these assessments  
3 and so, you know, I'm sure Dr. Burke will be able to  
4 explain them to you.

5 Q: Dr. Wadman why would you not use assessments?

6 A: I don't use these particular assessments.

7 Q: What assessment did you use?

8 A: I use the Static 99 R.

9 Q: And that's it?

10 A: Yes and we use the PPG and I looked at his PPG  
11 results.

12 Q: Okay and again I'm going to reference you to page  
13 nine of, actually it would be faxed page nine. It  
14 would be under issues to be addressed of the Able  
15 Screen Assessment.

16 A: Okay.

17 Q: Okay. Does that refresh your memory with regards to  
18 whether or not Dr. Burke stated that he does not  
19 show an interest in sadistic behavior?

20 A: Yes, it says that here, but again, just to let you  
21 know, that I did not go over this specifically with  
22 him. We don't use the Able NR at our forensic  
23 evaluation service and so this is a draft report.  
24 There were many errors in this report and when I  
25 went over them on the phone with Dr. Burke, he

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1 clarified for me what I was interested in here about  
2 the PPG and the end where it said that he does have  
3 sexual arousal. So you'll have, since it's a draft  
4 report, and I never received a copy of the final  
5 report, Dr. Burke would have to be the one to  
6 clarify whether that's a true statement or a mis-  
7 statement.

8 Q: I'm just asking you if you looked at that?

9 A: No, because we don't use the Able.

10 Q: Okay, did you look to Dr. Burke's finding that  
11 stated that Mr. Russell does not appear to have  
12 persistent sexual attraction to children?

13 A: Yes, that was and I believe in that conclusion, I  
14 asked him about that and he said that the next  
15 sentence says that Mr. Russell failed to demonstrate  
16 significant sexual arousal and Dr. Burke told me on  
17 the phone that that was a mis-statement, because  
18 again, this was a draft report and he had not gone  
19 through it and issue his final report. So basically  
20 said that he did demonstrate significant sexual  
21 arousal.

22 Q: Dr. Wadman, Dr. Burke states in his report, that you  
23 relied upon in preparing your report, he states,  
24 page ten, Bobby Russell does not appear to have a  
25 persistent, sexual attraction to children. Did you

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1 review that?

2 A: Yes I did.

3 Q: Okay.

4 A: And I spoke with Dr. Burke about his report and he  
5 said that he had made several errors in his report  
6 and this was not a final report. This was a draft  
7 report and so you would need to speak with him about  
8 his report and whether that's a true statement on  
9 his part or not. I do not know, because this is only  
10 a draft report.

11 Q: So the only assessment that you conducted on Bobby  
12 Russell was the Static 99?

13 A: The only one I specifically conducted myself, yes.

14 Q: What other assessments were conducted?

15 A: The PPG report conducted by Dr. Burke, which we  
16 would have done in our own lab, Dr. Burke did his  
17 and showed that was sexually attracted to female  
18 children.

19 Q: Well, Dr. Wadman, why would you not have done your  
20 own PPG?

21 A: We many times send our respondents down to Dr. Burke  
22 for him to do them. So, we actually have a contract  
23 with Dr. Burke to do our own PPGs and so there would  
24 be no reason for him to do two PPGs. He'd already  
25 done a PPG.

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1 Q: Dr. Wadman, with a man's life on the line, you don't  
2 see there's any reason for you to have another PPG  
3 done?

4 A: No, because what they find is if you do serial PPGs,  
5 if you do them too close together, you can actually  
6 get different results because they can learn the  
7 test. So, in other words, you can't, you can't just  
8 keep repeating the test. You do the test, you get  
9 the results that you get, then you score them.

10 Q: Well, Dr. Wadman, what's too close in time?

11 A: Well we, you know, we don't, he had already had the  
12 PPG; it showed what it showed and ...

13 Q: When did he do the PPG?

14 A: Well I don't know exactly because he said that  
15 there's a note by the date that says it's an error,  
16 so I don't know when he did the PPG.

17 Q: Before I believe you stated it was 2009, correct?

18 A: Let me look on the report. Yeah, I said I reviewed  
19 the report and it was June 26, 2009.

20 Q: So in two years time it would have been too soon to  
21 do another PPG to determine whether or not this man  
22 should be locked up potentially for the rest of his  
23 life?

24 A: Well, he's not going to be locked up for the rest of  
25 his life and what I'm recommending, you know, this

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1 is what I'm recommending and that based on his, the  
2 crimes that he pled guilty to, verified by the  
3 statements of little children, that he needs  
4 treatment. He has not had any treatment. He denied  
5 that he did any of this to them. That he came up  
6 with different stories, you know. I read, I read the  
7 account that he gave to police. It differed  
8 significantly from what he told me. He's given  
9 different accounts. I believe that he needs  
10 treatment; once a year they come up for a review and  
11 when they, when their condition is so changed that  
12 they are safe to be at large, then they are released  
13 from the program. This is not a life sentence. This  
14 is a yearly, an annual review that they get and he's  
15 already shown that he can't be trusted to comply  
16 with terms of his bond. I don't see why we would  
17 think that he could be trusted to comply with terms  
18 of his probation.

19 Q: Okay. Is it your opinion that pursuant to the terms  
20 of his probation that he successfully complete Dr.  
21 Burke's treatment program? Is it your position that  
22 he cannot get the same treatment with Dr. Burke that  
23 he would receive at the Department of Mental Health?

24 A: I have never been to Dr. Burke's treatment. I  
25 understand that it's very good. Dr. Burke is very

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1 well respected in his field. Like I said, we  
2 contract with him to do our PPGs. I've talked to him  
3 on the phone at times about different cases, so I  
4 have no doubt that he could get good treatment from  
5 Dr. Burke. The problem is is that he didn't comply  
6 with the terms of his, when he was out on bond. He  
7 had an ankle bracelet on and he was still out  
8 selling drugs, driving around with criminals, by his  
9 own admission, out selling drugs, driving a known  
10 criminal around in a car, not complying with the  
11 terms of his curfew and molesting two more children.  
12 So I don't see how it would benefit the community by  
13 taking that chance and that's what I'm saying. I  
14 don't think it's worth the chance that we would be  
15 taking were we to release him. I think that he needs  
16 in patient treatment, not out patient.

17 Q: How many hours of in patient treatment does a  
18 typical inmate or civilly committed individual  
19 receive?

20 A: It depends on whether, it depends on their level,  
21 their status level in the program. Some of the  
22 residents, once they've shown that they can be  
23 trusted to follow the rules and participate in all  
24 of the activities, do their assignments and what  
25 not, they're actually, they go to a program over in

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1 another building, another separate area. They go  
2 over there twice a week all day.

3 Q: Okay. Dr. Wadman, you said you relied upon the PPG,  
4 correct? Done by Dr. Burke?

5 A: I, it was one part of the, one part of the  
6 information that I looked at.

7 Q: So you relied upon Dr. Burke's PPG in reaching your  
8 determination?

9 A: His one part of the information, yes.

10 Q: Alright. Can you tell me what the highest levels  
11 were on that PPG?

12 A: The highest levels of what?

13 Q: What did he show the most response to?

14 A: He showed the highest response to female children.

15 Q: Dr. Wadman, didn't he show that just to one?

16 A: It's a stimulant, what's called a stimulate.

17 Q: Uh-huh.

18 A: And that was the highest response that he showed.

19 Q: Okay.

20 A: What they measure, what they do is they measure  
21 different sets and so they'll have, you know, it  
22 will be a scene and the child talking and what not  
23 and then they'll measure their response to that. It  
24 was the, his highest one was to the child, female  
25 persuasive.

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1 Q: Okay, what were the next four highest results?

2 A: He, to the adult female, persuasive and then to the  
3 adult female coercive, that would have been more  
4 like the violent type, not violent, basically  
5 coercing someone into doing something they don't  
6 want. And then the last one was to the adolescent  
7 female persuasive. So ...

8 Q: Which trial was that Dr. Wadman?

9 A: That would have been, you asked me for the highest  
10 ones, so that would have been the fifth one up from  
11 the bottom.

12 Q: Okay, Dr. Wadman ...

13 A: That, that, that again, like I said before, it's  
14 normal, it's considered normal for a male to be, so  
15 have sexual arousal to both adult and even  
16 adolescent females on the PPG. So the deviant  
17 arousal he had was to the child female, coercive or  
18 persuasive and that was the highest one that he  
19 had.

20 Q: Okay. Now did you also look at Dr. Burke's report  
21 where he stated that Mr. Russell does not appear to  
22 have chronic sexual interests and deviant sexual  
23 stimuli?

24 Mr. Flores: What page? What page is that on?

25 Mr. Shepherd: That would be page, that would be faxed

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1 page twelve.

2 A: And again, I just want to say this again, that I  
3 spoke with Dr. Burke about his report. He told me it  
4 was only a draft and he hadn't finished it and he  
5 did say that he had made, that this was not, you  
6 know, these were not necessarily his conclusions. He  
7 did say that, his report here for instance says that  
8 Mr. Russell failed to demonstrate significant sexual  
9 arousal to multiple stimulus sets and when I talked  
10 to Dr. Burke he said no, that's an error. He did  
11 demonstrate significant arousal. So, with Dr. Burke  
12 being here and he would be the one to be able to  
13 tell you what were the final conclusions of his  
14 report.

15 Q: Okay, alright and Dr. Wadman, again, you met with  
16 Bobby Russell for two hours and you only conducted  
17 the Static 99, correct?

18 A: Well, again, that's one part of my, it's just one,  
19 it's one part of the evaluation. It's the entirety  
20 of the information. It's looking at all the legal  
21 records, looking at the victim's statements, looking  
22 at the victim evaluations by the interviewers,  
23 looking at the witness reports, talking to him, it's  
24 all of that put together.

25 Q: You counted against Bobby because he denied having

1 committed the crimes correct?

2 A: No.

3 Q: You didn't find that his denial of having done it  
4 was a higher risk category?

5 A: No, almost everybody I evaluate denies that they did  
6 what they had done.

7 Q: And in this particular instance, you did not go and  
8 look for any of the evidence or any other supporting  
9 documentation that would have supported the finding  
10 that he did not, in deed, commit these crimes?

11 A: Well, he's not my role in this to be a police  
12 investigator. My role is to look at the information  
13 as given to me and the test that I conduct and the  
14 interview with, with the respondent and to come to  
15 reach some type of opinion, which is what I did.  
16 Now, I, I did look at the children's statements, the  
17 parents statements, I did look at their interviews  
18 with the forensic interviewer, the child forensic  
19 interviewer and see, you know, what they said. And  
20 all of the children said that they were molested by  
21 Mr. Russell. It's very rare that somebody in this  
22 position comes in and tells me exactly what they did  
23 with a child. By the time they get to me, they don't  
24 want to go into the program and so probably most of  
25 them say that they didn't do it. That's not

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1 unusual.

2 Q: So, any evidence that may have existed to support  
3 any inference that he did not actually do it you  
4 didn't see it?

5 A: Well, all of that would have been presented or  
6 should have been presented at the criminal case of  
7 his. This is a civil commitment process; this isn't  
8 a criminal trial. You know, he basically pled  
9 guilty to three counts of lewd act on a minor. If he  
10 didn't, if he didn't commit those crimes, then that  
11 should have been taken up at that time by his  
12 attorney.

13 Q: Okay, no further questions.

14 The Court: Re-direct?

15 Mr. Flores: Just one question Your Honor. It will be  
16 just one question Your Honor.

17 The Court: Okay.

18 RE-DIRECT EXAMINATION OF DR. WADMAN BY MR. FLORES:

19 Q: Mr. Shepherd alluded to Dr. Burke's report in a  
20 statement that said Mr. Russell did not show any  
21 sadistic sexual deviancy. Is it common for  
22 pedophiles to have sadistic fantasies as well?

23 A: It just depends on, that would depend. You know,  
24 what I've found with the pedophiles that I have  
25 evaluated and treated is that most of them are not

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1 sadistic; they don't have to be, because it's very  
2 easy to coerce a child into sexual activity. They  
3 are very impressionable, they're very trusting, they  
4 you know, frightened into not telling. So, there's  
5 really not a lot of sadistic, you know, most of them  
6 are not.

7 Q: Thank you Your Honor. Thank you Dr. Wadman.

8 The Court: Alright you can step down. Alright we're  
9 going to take a break in a moment. Do you have any  
10 other witnesses?

11 Mr. Flores: We don't Your Honor.

12 The Court: Alright, so the State rests?

13 Mr. Flores: The State would rest at this time Your Honor.

14 The Court: Alright ladies and gentlemen we're going  
15 to go ahead at this time and take a recess. The  
16 State has rested, which means it has presented all  
17 the evidence that it's going to present in its case  
18 in chief. Please go to your jury room for just a few  
19 minutes. You may not discuss the case. Thank you.

20 (Jury exits courtroom for break 3:27)

21 The Court: Alright we'll take a break right now and  
22 come back.

23 Mr. Flores: Just one matter Your Honor. Dr. Wadman is  
24 here under subpoena and if it's alright, we'd like  
25 to release her from that subpoena.

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1 The Court: Alright ladies and gentlemen, we are ready  
2 to move forward with the trial of this case. The  
3 State has presented the evidence that it is going to  
4 present in its case in chief. Mr. Shepherd will be,  
5 will the respondent be presenting any testimony?

6 Mr. Shepherd: Yes he will Your Honor.

7 The Court: Alright, call your first witness.

8 Mr. Shepherd: At this time I'd like to call Dr. William  
9 H. Burke.

10 The Court: Alright, put your left hand on the Bible  
11 and raise your right hand. Your name sir?

12 A: William Burke.

13 The Court: Do you swear the testimony you will give  
14 this court will be the truth, the whole truth and  
15 nothing but the truth, so help you God?

16 A: I do.

17 The Court: Alright, have a seat sir and state your  
18 name and spell your last name.

19 A: William Henry Burke. B-U-R-K-E.

20 The Court: Alright.

21 DIRECT EXAMINATION OF DR. BURKE BY MR. SHEPHERD:

22 Q: Dr. Burke if you could, inform the jury where you  
23 currently are employed.

24 A: Well, two places. I'm in private practice, South  
25 Eastern Assessments, specializing in assessment and

1 treatment of individuals with sexual disorders or  
2 convicted of any sexual crimes. I'm also an  
3 associate professor at the Medical University of  
4 South Carolina in the forensic psychiatry department  
5 primarily providing research data regarding six  
6 different research projects regarding human sexual  
7 behavior that I'm involved in.

8 Q: And Dr. Burke, what is the extent of your training?

9 A: Well my education is I was a cadet at the Citadel,  
10 degree in psychology and then I've got a Master's  
11 degree in counseling and then I got a PHD from the  
12 University of South Carolina in counseling. I've  
13 been personally trained by everyone who has  
14 authored the test that I administer on psycho-sexual  
15 evaluations with the exception of MMPI but I  
16 received specific training for that as well. I'm  
17 certified to administer two psychologist  
18 instruments, the Able Assessment ...

19 Q: Dr. Burke, how long have you been performing this  
20 type of work?

21 A: I've been involved with the assessment and treatment  
22 of sexual offenders since 1981. I guess by 1995 I  
23 finished my doctorate degree. I was essentially full  
24 time working with individuals with sexual disorders  
25 and they'd been convicted of sex crimes.

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1 Q: Dr. Burke have you had the opportunity to represent  
2 both Plaintiff's and Defendant's?

3 A: Yes sir.

4 Q: At this time I'd like to move to qualify Dr. Burke  
5 as an expert.

6 The Court: In what field?

7 Mr. Shepherd: In ...

8 Dr. Burke: I think it would best be in the assessment and  
9 treatment of individuals with sexual disorders.

10 The Court: Alright, any questions at this time or  
11 any objections from the State?

12 Mr. Flores: No objection Your Honor. The State would find  
13 Dr. Burke well qualified in that area.

14 The Court: He's qualified ladies and gentlemen of the  
15 jury as an expert in the field of assessment and  
16 treatment of individuals with sexual disorders. The  
17 same instruction I gave you earlier applies. You can  
18 consider this testimony of this witness just like  
19 you would give any other witness and give it the  
20 weight you think that it's entitled to. Alright, you  
21 can continue.

22 Q: Dr. Burke have you had the opportunity to assess  
23 Bobby Russell, Jr. ?

24 A: Yes sir.

25 Q: Do you recall when you may have assessed Bobby

1 Russell, Jr.?

2 A: Well, it's been a few years. I think, I don't know  
3 the exact date. It was prior to his pleading guilty  
4 to lewd act charges that was referred to by Dr.  
5 Wadman.

6 Q: Okay, Dr. Burke I'm going to hand you a copy of a  
7 document and ask you to identify that for us please.

8 The Court: What number?

9 Mr. Shepherd: That is respondent's 2.

10 A: Well this is a copy of the draft report that I put  
11 together for Mr. Russell's attorney. And I'd like to  
12 make a statement about that to clarify the process  
13 of this, if that would be alright?

14 Q: Please if it would help.

15 A: When I'm given a task of evaluating someone prior to  
16 a criminal case, often times a defense attorney will  
17 hire me and with the understanding that what we,  
18 that any work I produce is under the attorney/client  
19 privilege, so that way the attorney can chose to use  
20 the information or not use the information. And  
21 although there's some low risk things on the  
22 evaluation, I think that are going to be discussed,  
23 there was some things that particularly the PPG test  
24 that was not favorable and so his attorney chose not  
25 to use this report. So I wanted to be clear this

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1           isn't a completed report and I have not signed the  
2           report. All of my reports that I have completed are  
3           signed by me. And I agree with everything that Dr.  
4           Wadman said about my report except it was full of  
5           errors. There are two errors. One is just one word  
6           and the other is the date. Everything else is  
7           correct.

8       Q:   Thank you Dr. Burke. At this time I'd like to move  
9           to introduce Dr. Burke's draft evaluation.

10   The Court:       Any objection?

11   Mr. Flores: We would object to this based on its  
12           relevance. Dr. Wadman has testified to some errors,  
13           the information that she gathered ...

14   The Court:       Wait a minute. You object to it on  
15                      relevance?

16   Mr. Flores: Yes Your Honor.

17   The Court:       And you want to be heard?

18   Mr. Flores: Yes, I apologize.

19   The Court:       Ladies and gentlemen please go to your  
20           jury room for just a moment. You may not discuss the  
21           case.

22   (Jury break 3:52)

23   The Court:       Alright Mr. Flores?

24   Mr. Flores: Thank you Your Honor, may it please the  
25           Court? I apologize for speaking ...

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1 of it, may not be appropriate at this stage.

2 Mr. Shepherd: Yes sir.

3 The Court: But I'll let you question the witness. Mr.

4 Flores I'm not going to rule on your objection yet,

5 because the report itself may speak of things that

6 you don't cover. Alright?

7 Mr. Flores: Thank you Your Honor.

8 The Court: Okay, anything else before the jury comes

9 in?

10 Mr. Shepherd: I have nothing further.

11 The Court: Alright, you can bring them back.

12 (Jury enters courtroom 3:55)

13 The Court: Okay, you can continue.

14 Q: Dr. Burke, is this the draft report that you created  
15 for Bobby Russell?

16 A: Yes sir.

17 Q: Okay. Do you recall when you conducted this  
18 examination?

19 A: I don't; I believe June 26, 2007.

20 Q: Okay, alright Dr. Burke is it true that this  
21 particular process cannot necessarily predict future  
22 behavior with absolute certainty I suppose?

23 A: Ask me again?

24 Q: Can this type report, will this process with regards  
25 to these evaluations, Dr. Wadman's evaluation, any

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1 type of assessment, can it determine to a degree of  
2 certainty whether or not somebody is going to commit  
3 a future act?

4 A: Well I think the State of the science right now is a  
5 place where, I think you can make a judgment if  
6 someone is going to be more likely or not, so I  
7 interpret, my interpretation is more likely than not  
8 is more than fifty percent and I think if an  
9 assessment is done in a proper manner, I think, I  
10 believe clearly you can, with a high degree of  
11 certainty, predict future behavior. Having said  
12 that, there is room for error and that error may be  
13 anywhere from ten to fifteen percent according to  
14 the research.

15 Q: Yes sir.

16 A: But to answer your question, yes I think you can.

17 Q: Okay. And is it able through these types of  
18 assessments to determine past behavior?

19 A: Is it able to determine past behavior? It, the  
20 process, what we are given is some information about  
21 a crime that's been alleged to have been committed  
22 and we go from there with some standard protocol as  
23 indicated for the association for the treatment of  
24 sexual abusers. That's the national, international  
25 organization that has standards of care that you

1 must follow in an evaluation and so, I think again  
2 beyond that fifty percent, likelihood, the  
3 evaluation can, can help you determine if a past  
4 behavior is appropriate.

5 Q: Okay. Now, Dr. Burke, when you examined Bobby  
6 Russell, you performed several tests. Can you tell  
7 us what tests you performed?

8 A: Well, like I mentioned earlier, there's some  
9 standards of care. One is Actuarial scale that Dr.  
10 Wadman already talked about and that's the Static 99  
11 and that gives you a baseline to start with. So for  
12 instance, if a Static 99 says this individual is a  
13 medium risk, what you then do is you do the rest of  
14 the assessment and you add or subtract to that level  
15 of risk, depending on what you find. And so the  
16 Stable 2007 it predicts risks over a year, three  
17 hundred and sixty five days. The Static 99 predicts  
18 risk over fifteen years okay? Then the acute  
19 measurement, which was the next one, predicts risks  
20 over the next forty five days. So there's protocol  
21 for that. Then there's the hair --- checklist which  
22 is a measurement which includes interview and  
23 document review where you find if an individual  
24 personality, his presentation and history matches  
25 those of a known individuals who have a diagnosis of

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1 psychotherapy. Psychopaths are really, really  
2 dangerous people, so they're the kind of people who  
3 commit multiple murders or rapes or combination of  
4 both and can have a good night's sleep and not worry  
5 about it, have no remorse or guilty or anything.  
6 So, then we have the Able Assessment which is an  
7 instrument that has three hundred and sixty pictures  
8 of men, women and children in bathing suits. An  
9 individual looks at those pictures twice and  
10 responds to questions about that. One is how old do  
11 you think this person is and another is are you  
12 sexually attracted to this person? What happens  
13 when you're looking at that your viewing time being  
14 calculated or tabulated and then placed into  
15 different categories. Two four year olds, sixteen  
16 year olds, adolescents and adults. So that sexual  
17 interest, which may the interest and how long you  
18 view the picture, which is different than sexual  
19 arousal. Sexual arousal can only be measured in a  
20 laboratory with a Penile plethysmography for men.  
21 And that's where there's a gauge that's placed on  
22 the penis, that we don't do. They put it on  
23 themselves in a room with the door shut. We never  
24 see them naked or anything like that. We do it with  
25 as much dignity as possible. And it measures the

1 blood flow through the penis. So when they see a  
2 picture of a child in conjunction with a story about  
3 something happened to that child sexually, we can  
4 get an accurate reading if they're becoming sexually  
5 aroused to that. So arousal and interest are two  
6 different, two different things. Then you have, you  
7 should do some personality assessment and that's  
8 what the Minnesota Multi phrase Personality is for.  
9 The Burke sexual fantasy scales, that's something  
10 I've developed fifteen years ago and is used in  
11 about ten programs across the United States. It  
12 quantifies sexual thoughts and fantasies with their  
13 level of awareness regarding their behavior. It  
14 simply means it helps quantify that they do this  
15 with forethought or not. Did they commit a crime  
16 against a person and did they think about it or was  
17 it impulsive? Were they fantasizing about it before  
18 they do it? That's one thing. And then the Conner's  
19 Continuous Performance test is a measure, is a  
20 computer driven test where you have to hit the space  
21 bar when different letters of the alphabet flash on  
22 and off the screen for a fifteen minute period.  
23 Which sounds really simple, but it's really complex  
24 and it's a really good indicator of attention  
25 deficit disorder or brain damage. The first line of

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1           picking up a hint if somebody has brain damage or  
2           not. So, those sorts of things are part of the  
3           standard care that you should follow in this kind of  
4           assessment, so that's what we did here.

5       Q:   Dr. Burke did you perform the Static 99 on Bobby  
6           Russell?

7       A:   I did.

8       Q:   Okay and Dr. Burke what was your findings with  
9           regard to the Static 99?

10      A:   Okay I scored him a three which is in the medium low  
11           category which predicted that he would, it predicts  
12           over a fifteen year period recidivism so this  
13           predicted there's a nineteen percent chance he  
14           would be re-arrested for sex crimes in the future.

15      Q:   And is that in the low medium risk?

16      A:   Correct.

17      Q:   Okay and did you take into account any dynamic  
18           factors like the effect of treatment and  
19           supervision?

20      A:   Well, like I stated earlier, you start with a Static  
21           99 and you get a baseline and then dynamic factors  
22           are things that you can change. So, certainly issues  
23           around sexual arousal can be controlled and  
24           quantitatively changed to some degree and that's  
25           taken into account. But I guess you're asking

1 specifically about that one line about the  
2 predictive score does not take into account dynamic  
3 factors like that effect of treatment. So, that does  
4 not take into account, I did not address whether  
5 treatment would be effective or not or to what  
6 degree. And again, I didn't until the final report.

7 Q: Right, right. Do you think in making a determination  
8 as Dr. Wadman did, from your perspective that it  
9 would be necessary to consider the effects of  
10 treatment and supervision?

11 A: I, please ask again.

12 Q: Sure. Do you think from your perspective, based on  
13 Dr. Wadman's report, where she did not take into  
14 account dynamic factors like treatment and  
15 supervision in her assessment or risk, do you feel  
16 that those are areas that should be addressed to  
17 some degree when looking at a person's risk  
18 assessment and what could potentially mitigate?

19 A: Well, I think it should be considered. I'm not sure  
20 that's what she was tasked with. I think her task  
21 was rather he met a specific criteria and what we're  
22 talking about is a therapeutic prevention. So, I  
23 mean, in all fairness to her, I don't think she was  
24 asked that. I think she was asked does he met this  
25 legal criteria.

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1 Q: Okay. In looking at Mr. Russell's scores on the  
2 Static 99, with regards to risk categories for  
3 violent crimes, sexual recidivism, what did you  
4 find?

5 A: Well the Static 99 it was medium low with nineteen  
6 percent chance he would re-offend sexually and a  
7 thirty percent chance he would re-offend with a  
8 violent crime which that includes sexual crimes.  
9 Violent crimes like criminal domestic violence,  
10 assault and battery, murder.

11 Q: And static 99, that's over a longitude ...

12 A: Fifteen year period.

13 Q: Okay on the Stable 2007, did you find that Bobby  
14 Russell was a low nominal risk for sexual  
15 recidivism.

16 A: Right, low nominal risk. The Stable 2007 is made up  
17 of a series of questions about substance abuse,  
18 emotional stability, problem solving skills, sex  
19 drives, so he scored ten out of twenty six points.  
20 That ended up being a low nominal risk. It was  
21 predicted that he would be an 8.8 percent chance he  
22 would re-offend over two years. And 12.6 percent  
23 chance he would re-offend.

24 Q: And all of those are low values, correct?

25 A: In the low category.

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1 Q: Can you explain to the jury the Able Assessment and  
2 how Mr. Russell scored.

3 Q: As I stated a while ago, the sexual interest test  
4 where they look at three hundred and sixty pictures  
5 of men, women and children and their viewing time is  
6 calculated per category. The results indicated that  
7 he, you know, he viewed the adult, Caucasian female  
8 and adolescent Caucasian females to a level of  
9 statistical significance meaning he looked at it  
10 quite a bit longer than he did the children or the  
11 male pictures. And then there's also some pictures  
12 in the Able assessment that depict people being  
13 beaten and suffering and tied up and things like  
14 that and so it's believed that if you view those  
15 considerably longer than the other categories, then  
16 you're more likely to be sexually interested in  
17 sadistic behavior meaning sadistic behavior is if  
18 you get pleasure, in some cases arousal from  
19 suffering, seeing other people suffer.

20 Q: And is responding significantly to adult, Caucasian  
21 females and Adult Caucasian, adolescent females,  
22 excuse me, is that normal for a heterosexual male?

23 A: That's considered normal, it doesn't sound normal,  
24 but the pictures of adolescent females are sixteen  
25 years of age and they have breast development and

1 curvature of their body. They look like Brittany  
2 Spears in the Pepsi commercial, the Super Bowl, you  
3 know, that kind of thing, you know there's  
4 certainly, you can tell they're teenagers, but  
5 they're, you know, they're developed, they're right  
6 on the, knocking on the door of being an adult  
7 woman.

8 Q: Dr. Burke on these objective measures of the  
9 client's awareness of sexual interest in adult and  
10 adolescent females there are three main questions  
11 addressed by the assessment. How did Mr. Russell  
12 respond to those questions?

13 A: Well, that, that's not how he responded to  
14 questions. That's his ...

15 Q: What was your determination?

16 A: That's his viewing time you know. It's, it's a  
17 physical measure. It's not ...

18 Q: Okay.

19 A: He's not saying yes I'm attracted or he actually  
20 does say that, but that's not what that's  
21 addressing. He doesn't appear to have persistent  
22 sexual attraction to children as evidenced by his  
23 viewing of the adult and adolescent females quite a  
24 bit longer and doesn't have sexual interest in  
25 sadistic or behavior. Now, the probability of past

1 child sexual abuse, what Dr. Able did was he got a  
2 bunch of men, he got a hundred men who had never  
3 committed a sex crime and they passed a polygraph  
4 that they had never molested a child and he gave  
5 them this test. And then he got about a hundred men  
6 who had been convicted of sex crimes against  
7 children, but they said they were innocent and they  
8 failed a polygraph, okay? He gave them this test and  
9 from that he came up with an equation, so when an  
10 individual takes this test, it, you fall into one  
11 category or the other is what the hope is. Now, in  
12 statistics though, there's always, there's always  
13 sort of a no man's land and in this particular  
14 equation, there's a six percent window of no man's  
15 land. What that means is if your score, if your  
16 scores falls within that six percent, he can't say  
17 you're in the offender class who failed the  
18 polygraph. Said they were innocent and oh, by the  
19 way got convicted or other innocent, that they're  
20 innocent, never been accused and passed a polygraph,  
21 so in this case Mr. Russell fell right in the  
22 middle. The equation couldn't place him in an  
23 offender or non offender class.

24 Q: Dr. Burke, is it your opinion that in order to make  
25 a determination from your perspective of whether

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1 Bobby Russell should be committed or civil  
2 commitment pursuant to these proceedings, that it  
3 would be necessary to re-assess him under these  
4 tests?

5 A: Me personally?

6 Q: Yes sir.

7 A: Right, my wife got subpoenaed on Saturday for me to  
8 be here, as I was out of town and yeah, I think  
9 ethically I would have to do a whole other  
10 evaluation and, cause things change over the years,  
11 so I'm not prepared to state either way.

12 Q: Throughout the bulk of your assessment, Bobby  
13 Russell persistently, with the exception of the PPG,  
14 scored in the low to medium, low nominal risk  
15 categories, correct?

16 A: You're talking about risk category, well, having a  
17 high risk category on static. But that would be  
18 acute in Static 99. I'm sorry, Static 99 was stable.  
19 He was in the low to medium range.

20 Q: And with regards to the high current risk, what  
21 types of factors fall into that?

22 A: Failure to comply with supervision and sexual  
23 interests, I'm sorry, sexual arousal to females are  
24 the equation as are the propensity to use alcohol or  
25 drugs through the things that over a forty five day

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1 period of time would make him more likely to re-  
2 offend.

3 Q: So when we talk high risk, we're talking a forty  
4 five day period of time after release?

5 A: Right.

6 Q: A person such as Bobby Russell subject to the terms  
7 of his probation mandating substance abuse  
8 counseling, random drug screening, treatment through  
9 you, that is a condition of his probation that he  
10 successfully complete your program. Would those  
11 sorts of actions on his part have some bearing on  
12 whether or not he should be civilly committed?

13 A: Is the question ...

14 Q: Well, let's look at it ...

15 A: ... whether I could treat him or not?

16 Q: Whether you could treat him with regards to this  
17 high current risk category, which is where that  
18 forty five day window; it's my understanding  
19 justified longevity. He's a lower risk, but for  
20 that short acute time frame, subject to the terms of  
21 his probation, would you be able to adequately treat  
22 a person like Bobby Russell?

23 A: Well, I think, I think there's really mutually  
24 exclusive points, because I've got, I work out of  
25 four offices and I'm personally responsible for two

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1 hundred and fifty, roughly two hundred and fifty  
2 convicted sex offenders in seventeen counties in  
3 South Carolina and practically all the federal cases  
4 in Columbia are, I take what I do very seriously and  
5 I do a really good job with polygraphing them and we  
6 think have the capability to give medication. Having  
7 said all that, you know, we treat individuals like  
8 this all the time, but I think your question, I'm  
9 not sure what the question is.

10 Q: Could you treat Bobby Russell through your program?

11 A: Well sure.

12 Q: Okay and if Bobby Russell were not to comply with  
13 the terms of your treatment program, would there be  
14 any hesitation on your part to report it to the  
15 Court?

16 A: No, no problem at all.

17 Q: Now, Dr. Burke, you do recommend through this draft  
18 assessment, there was a recommendation for a  
19 polygraph. Are you aware of whether a polygraph was  
20 performed on Mr. Russell?

21 A: I was not until I heard earlier.

22 Q: Okay and so, none of those types of, none of that  
23 evidence really made it into your assessment of Mr.  
24 Russell. We sort of stopped with this basic  
25 assessment and evaluated him in your office correct?

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1 A: Well, I mean we stopped short of doing a full, him  
2 signing it going over it and handing it in.

3 Q: So, we would need, we would need another battery of  
4 tests?

5 A: If you're asking me whether I can say whether he  
6 meets the statute or not ethically, I mean I haven't  
7 talked to the gentlemen in a number of years. Found  
8 out over the weekend I was going to be here today,  
9 sort of embarrassed that this even got out of the  
10 attorney's office. It really shouldn't have gotten  
11 out. It was attorney client privilege, but I can't  
12 say one way or the other, because I'm not prepared  
13 and I don't have all of the information.

14 Q: And is it, is it normal for an individual to, strike  
15 that. I think I'll just stop right there. Thank you  
16 Dr. Burke.

17 The Court: Mr. Flores?

18 Mr. Flores: Yes Your Honor.

19 CROSS EXAMINATION OF DR. BURKE BY MR. FLORES:

20 Q: Good afternoon Dr. Burke.

21 A: Hey.

22 Q: I don't have many questions for you. I just want to  
23 clarify some questions about this report. This is a  
24 draft, is that correct?

25 A: That's correct.

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1 Q: And there are a few errors?

2 A: There' a few.

3 Q: However, Mr. Shepherd has questioned you about, he's  
4 clearly questioned you to a large extent on the  
5 Static 99, the Stable 2007 and Acute 2007 scores and  
6 at the time that you conducted this evaluation, you  
7 said within forty five days of that time, it was  
8 likely, highly likely that Mr. Russell would commit  
9 another offense. Is that correct?

10 A: Almost correct. What that predicts is once released  
11 into the community, not forty five days from when I  
12 evaluated him, but forty five days when he's  
13 released to the community.

14 Q: Alright. Now, Dr. Burke, I just want to point to, do  
15 you have a copy of this?

16 A: Yeah.

17 Q: This would be, I think, faxed page number five.  
18 Where under the Conner's Continuous Performance  
19 Test.

20 A: Right.

21 Q: And I just want to confirm that this statement is  
22 true. It's at the bottom of the first paragraph and  
23 it says the confidence index can be described in the  
24 following way: the chances are 99.9, 99.9 out of 100  
25 that a clinically significant problem does exist

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1 associated with inattention an impulseitivity not  
2 related to a diagnosis of ADHD.

3 A: That's correct.

4 Q: That is a correct statement?

5 A: That is a correct statement.

6 Q: And ADHD is, just for clarification?

7 A: Commonly called ADD, but it's Attention Deficit  
8 Hyperactivity Disorder. So what that indicated was  
9 he had some inattention and impulseitivity problems,  
10 but it was not due to a diagnosis of ADHD. It was  
11 suggested a possibility that he had a head injury or  
12 history of a head injury or some other organic brain  
13 damage. I stated later that I felt like he needed a  
14 neurologist to examine him.

15 Q: Just again for further clarification, as part of  
16 this report, there's a statement that you received  
17 information from the patient and collateral  
18 information provided by the patient and other  
19 sources. It's on the first page, it's a warning  
20 regarding limitations of this summary.

21 A: Right.

22 Q: Did you, Dr. Wadman has testified that she received  
23 an incident reports, statements from the children,  
24 the parents, everybody involved. Did you receive  
25 that information as part of this assessment?

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1 A: Well, to be honest with you, I don't know. I do,  
2 because it's not listed and the following report I  
3 have all of the documents listed I've gone over and  
4 I didn't do that here. It's, it wasn't, it wasn't  
5 suppose to go anywhere. So.

6 Q: Alright and, and, am I correct in stating, when you  
7 conduct these type of evaluations, you make no  
8 assumption as to wether or not Mr. Russell has or  
9 has not committed the acts with which he is charged?  
10 Am I correct in that assumption?

11 A: No, we have to be really clear about something. When  
12 I did this, he was not convicted. His attorney sent  
13 it to me and said tell me what you think. Okay?  
14 That's a totally different animal than doing an SVP  
15 hearing. Okay? I mean those are two different  
16 things. So, so, ask me the question again.

17 Q: I just want to make sure I and my question was this,  
18 when you are asked to conduct these evaluations, you  
19 make no assumption as to the guilt or innocense with  
20 regard to the particular charges that Mr. Russell  
21 ...

22 A: With this, with this document ...

23 Q: Right, with this document.

24 A: ... that I'm working on, right, I had to, I could  
25 not take the position. As I, as it was stated,

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1 reported to me from Mr. Russell he was saying that  
2 he was innocent the day I evaluated him.

3 Q: So you've done no evaluation and I think you've  
4 testified it would be unethical for you to give an  
5 opinion in this matter today, but you've done no  
6 evaluation after Mr. Russell's guilty pleas where he  
7 admitted that he did that conduct?

8 A: That's correct.

9 Q: Your Honor I think that's all I have.

10 The Court: Re-direct?

11 RE-DIRECT EXAMINATION OF DR. BURKE BY MR. SHEPHERD:

12 Q: Dr. Burke, does a patient's inattention and  
13 impulseitvity of Mr. Russell's per your finding, is  
14 that something that could be treated medically and  
15 clinically?

16 A: Well, another physician, another neurologist, but I  
17 suggested that he be evaluated by one and they could  
18 better answer that question.

19 Q: Would that be something that would assist in your  
20 particular type of program for treatment, were he to  
21 be released per the terms of his probation?

22 A: I'm just really having a hard time with some of your  
23 questions. Can you ask that again?

24 Q: Sure, with regards to the terms of his probation ...

25 A: Right.

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1 Q: And one of those terms being he has to come to see  
2 you for treatment, would it help you in treatment of  
3 him if he had this type of diagnosis or, or got the  
4 type of assistance he needed with regards with the  
5 impulseitvity issues?

6 A: Okay, I would, if I were charged with the  
7 responsibility of monitoring and treating him, I  
8 think it would be absolutely necessary that he have  
9 a proper ---\_again I'm not a physician, but I have  
10 two psychiatrists on staff who are who would address  
11 those issues.

12 Q: And if Mr. Russell were out on probation going to  
13 you for services and did not go and get the  
14 neurology report or any type of exam would you have  
15 any type of hesitation contacting the Solicitor's  
16 office that he violated a provision of his probation  
17 for your program?

18 A: Well, I wouldn't have any problem with that. I mean,  
19 you know, if he didn't have any health insurance or  
20 anything ... Listen, I don't have a problem at all  
21 calling probation and saying look this guy's not  
22 following, you know, not following protocol. I take  
23 what I do very seriously and I don't --- I'm pretty  
24 strict with the program too, so to answer your  
25 question, no I don't have a problem calling

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1           probation at all.

2       Q:   Great, thank you Dr. Burke. Nothing else.

3       The Court:       Anything else Mr. Flores?

4       Mr. Flores: No Your Honor.

5       The Court:       Alright, thank you sir. You can step  
6                           down.

7       Dr. Burke:       Your Honor?

8       The Court:       Yes?

9       Dr. Burke Could you, if you could put in an order that I  
10                       could submit to the state for my time?

11      The Court:       Okay, we'll deal with that later.

12      Dr. Burke:       Okay, thanks.

13      The Court:       Alright thank you. Okay, next witness?

14      Mr. Shepherd: Okay Your Honor I call Mr. Bobby Russell.

15      The Court:       Alright. Any objection to Mr., Dr. Burke  
16                       being excused?

17      Mr. Flores: None whatsoever.

18      The Court:       Alright, place your left hand on the Bible  
19                       please sir and raise your right hand. And you name  
20                       sir?

21      A:   Bobby Russell, Jr.

22      The Court:       Do you swear the testimony that you give  
23                       to this court will be the truth, the whole truth and  
24                       nothing but the truth, so help you God? Alright,  
25                       thank you sir, you may have a seat. And your name

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1 sir?

2 A: Bobby Russell, Jr. You want me to spell that?

3 The Court: Yes sir.

4 A: R-U-S-S-E-L-L.

5 The Court: Okay, pull that microphone down just a  
6 hair. Alright, go ahead Mr. Shepherd.

7 DIRECT EXAMINATION OF MR. RUSSELL BY MR. SHEPHERD:

8 Q: Mr. Russell, if you had gone forward with a trial,  
9 how many years could the State have put you away for  
10 if they had gotten a guilty verdict?

11 Mr. Flores: Objection Your Honor. This calls for  
12 speculation

13 The Court: Alright, if he knows. I'm sure ...

14 Q: Mr. Russell do you have a general idea of the time  
15 frame that the State could have incarcerated you for  
16 had they gotten a guilty plea?

17 A: Forty five years.

18 Q: I'm sorry, not a guilty plea, a guilty verdict?

19 A: Forty five years.

20 Q: Alright forty five years. What type of plea deal did  
21 the State approach you with?

22 A: Three years, time served with probation.

23 Q: Was there a suspended sentence?

24 A: It was fifteen, suspended to three.

25 Q: Okay, what does fifteen years suspended mean?

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1 A: It means if I violate anything, if I violate any  
2 terms of my probation I can go to prison for, I  
3 guess for each charge, fifteen years, which is forty  
4 five years.

5 Q: Okay, now Mr. Russell, for the terms of your  
6 probation, can you be in the presence of minor  
7 children?

8 A: No sir.

9 Q: The terms of your probation, can you use drugs and  
10 alcohol?

11 A: No sir.

12 Q: On the terms of your probation, do you have to take  
13 prescribed medication for any bi-polar or mental  
14 disorder. The terms of your probation, do you have  
15 to register as a sex offender?

16 A: Yes.

17 Q: Do you have to go around and tell your neighbors?

18 A: Yes sir.

19 Q: Alright, do you have to undertake substance abuse  
20 counseling?

21 A: Yes.

22 Q: The terms of your probation, do you have to run  
23 random drug and alcohol testing?

24 A: Yes sir.

25 Q: For the terms of your probation, do you have to

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1           successfully complete Dr. Burke's treatment program?

2       A:    Yes sir.

3       Q:    Okay. Mr. Russell, do you know what happens if you  
4           do not do all of those things?

5       A:    I go back to prison.

6       Q:    Do you want to go back to prison?

7       A:    No sir.

8       Q:    Okay. Mr. Russell, did you have a polygraph?

9       A:    Yes sir.

10      Mr. Flores: Objection Your Honor.

11      The Court:        Yes sir?

12      Mr. Flores: Polygraphs are not ...

13      The Court:        Come on up.

14      (Side Bar)

15      The Court:        Alright, objection sustained.

16      Q:    Mr. Russell, the terms of your probation, if you  
17           have to go and see Dr. Burke and you've heard the  
18           testimony from the experts that you might have some  
19           kind of organic brain disorder, will you go get the  
20           neurology reports and take the treatment necessary?

21      A:    Yes sir.

22      Q:    And again, what's the penalty if you don't do it?

23      A:    I go to prison.

24      Q:    No further questions.

25      The Court:        Mr. Flores?

1 CROSS EXAMINATION OF MR. RUSSELL BY MR. FLORES:

2 Q: Good afternoon Mr. Russell.

3 A: Hey.

4 Q: If I may approach the witness Your Honor?

5 The Court: Yes sir.

6 Q: Mr. Russell I'm going to show you what's been marked  
7 as Plaintiff's exhibit 1,2 and 3 and see if you  
8 recognize these?

9 A: Yes sir.

10 Q: And what are these exhibits?

11 A: Those are my sentencing sheets, is what it looks  
12 like. Yeah, the sentencing sheets.

13 Q: And it describes all the sentencing and probation  
14 and conditions that Mr. Russell just described and  
15 you agree with. Is that correct?

16 A: Yes sir.

17 Q: May I have those back? Right here, is this your  
18 signature on Plaintiff's exhibit 1?

19 A: Yes sir.

20 Q: And on Plaintiff's exhibit 2?

21 A: Yes sir.

22 Q: And on Plaintiff's exhibit 3?

23 A: Yes sir.

24 Q: Isn't it correct that on November 8, 2010, you were  
25 in this very courtroom, entering this guilty plea.

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1 Is that correct?

2 A: Yes sir.

3 Q: And you placed your hand upon the Bible and swore to  
4 tell the truth, the whole truth and nothing but the  
5 truth. Is that correct?

6 A: Yes sir.

7 Q: To these three charges, that's correct?

8 A: Yes sir.

9 Q: That you indeed did commit these three offenses  
10 isn't that correct?

11 A: Yes sir.

12 Q: Beg the Court's indulgence. I have nothing further  
13 Your Honor.

14 The Court: Alright, re-direct. Ladies and gentlemen,  
15 let me do this; if you would please step in your  
16 jury room and please do not discuss the case. I'll  
17 have you back out momentarily. Is your last name  
18 angel or angle?

19 A: Angle sir.

20 The Court: I'm going to appoint you as foreperson of  
21 the jury. The foreman will tell you, excuse me, the  
22 bailiff will tell you where to sit when you come  
23 back out. Okay?

24 (Jury Break 4:34)

25 The Court: Alright, just so the record will be

1 complete, Mr. Shepherd you can continue with the  
2 questions that we discussed up here.

3 Mr. Shepherd: I was simply going to ask if he had taken a  
4 polygraph test under Dr. Burke's recommendation.

5 A: Yes sir.

6 Mr. Shepherd: And I was going to ask if he had passed  
7 that?

8 The Court: Go ahead and answer.

9 A: Yes sir.

10 The Court: Alright and Mr. Flores you objected to  
11 that under what basis?

12 Mr. Flores: The polygraph tests are inadmissible evidence  
13 as to the truth or falsity of a particular ...

14 The Court: Well, polygraph tests are undoubtedly  
15 scientifically unreliable. That's not my conclusion,  
16 that's what science concludes in all reports across  
17 the country say that passing or failing a polygraph  
18 is not admitted under any circumstances. There was  
19 some mention earlier of this witness having had  
20 taken a polygraph when Mr. Shepherd was questioning  
21 Dr. Wadman. I believe that was in the context of  
22 did you know he passed a polygraph. How about the  
23 objection then?

24 Mr. Flores: I don't believe that was the way I remember  
25 that happening.

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1 The Court: What was your question?

2 Mr. Flores: I believe it was did he take one or did you  
3 review the results of any polygraph?

4 The Court: So, there was no result? Okay, alright.  
5 What's your position on this? On the admissibility  
6 of the polygraph?

7 Mr. Shepherd: The admissibility, you know, we're talking  
8 about a PPG which measures essentially the same  
9 thing as a polygraph. It's measuring breaths, it's  
10 measuring blood flow, it's measuring response to a  
11 stimulus. He took this with regards, at the  
12 recommendation of Dr. Burke who had done the  
13 assessments and you know, we're looking at an expert  
14 opinion saying I'm only looking to the guilty pleas,  
15 but there's more to this story and if the man  
16 pursuant to Dr. Burke's recommendation did take a  
17 polygraph examination and did pass it, of course I  
18 don't have an expert here to present the polygraph,  
19 but Mr. Russell has informed me.

20 The Court: Okay, you think it's admissible in the  
21 same respect that the PPG is?

22 Mr. Shepherd: I think so. Of course I've never raised an  
23 objection to the PPG.

24 The Court: The PPG is recognized by science to be a  
25 reliable test. I don't know how the thing works; the

1           only thing I can tell you is that I know from the  
2           whatever scrutiny you look at it whether it's our  
3           state law review or whatever else, the PPG is  
4           scientifically reliable. The only, there's a case  
5           that the only case that I know of directly dealing  
6           recently with PPG is that it cannot be used in court  
7           to determine whether or not he's actually guilty of  
8           what he did, but it is admissible in the SVP  
9           setting. Now as far as the polygraph, I would have  
10          thought that over the years, medical science or  
11          other science would have gotten to the point where  
12          the polygraph could be refined and to some point be  
13          declared reliable. However, I'm bound by what the  
14          law is now and that is that it's not. So, I'm going  
15          to sustain your objection to the witness or any  
16          other witness saying what the result of it was. So,  
17          I just wanted to make sure that was clear for the  
18          record and make sure you are fully protected on the  
19          record. Have you concluded your questioning of the  
20          witness?

21       Mr. Shepherd: Yes, I do have just one short question.

22       The Court:        Alright, we'll have the jury come back in  
23                   and continue with that.

24       (Jury enters courtroom 4:39)

25       The Court:        Alright, Mr. Shepherd?

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1 Mr. Shepherd: Thank You.

2 RE-DIRECT EXAMINATION OF MR. RUSSELL BY MR. SHEPHERD:

3 Q: Alright Mr. Russell, you were just shown State's  
4 exhibit 1,2 and 3. These would be the sentencing  
5 sheets, correct? You pled guilty?

6 A: Yes sir.

7 Q: Did you plead guilty with terms of probation?

8 A: Yes sir.

9 Q: Okay and you're going to honor the terms of that  
10 probation?

11 A: Yes.

12 Q: You don't want to go back to prison?

13 A: No sir.

14 Q: No further questions.

15 The Court: Mr. Flores?

16 Mr. Flores: Nothing further Your Honor.

17 The Court: Alright, you can step down. Alright,  
18 we'll take a recess at this time.

19 Mr. Flores: No Your Honor.

20 Mr. Shepherd: No Your Honor.

21 The Court: Alright ladies and gentlemen we are going  
22 to break for the day. If you will please be back in  
23 the jury room tomorrow at 9:30. Will that be a  
24 problem, time wise, for anybody? Alright, please be  
25 back in your jury room at 9:30 tomorrow morning. You

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1           you ready to proceed?

2       Mr. Flores: Yes, Your Honor.

3       The Court:        Alright sir.

4       CLOSING ARGUMENTS OF MR. FLORES:

5       Mr. Flores:       May it please the Court?

6       The Court:        Yes sir.

7       Mr. Flores: Mr. Russell, Mr. Shepherd, ladies and  
8           gentlemen of the jury, good morning. When I came  
9           before you yesterday afternoon I said that this case  
10          was about one question. It's whether or not Bobby  
11          Russell is a sexually violent predator. To that  
12          end, the State must prove to you, beyond a  
13          reasonable doubt of 1. Mr. Russell has been  
14          convicted of a sexually violent offense and 2. That  
15          he suffers from a mental abnormality or personality  
16          disorder that makes him more likely to commit acts  
17          of sexual violence. I would submit to you that the  
18          evidence presented, both by the State and by Mr.  
19          Russell proves beyond a reasonable doubt that he is  
20          indeed a sexually violent predator. First, to  
21          prove that Mr. Russell has been convicted of such an  
22          act or an offense, the State submitted into evidence  
23          three separate exhibits which contain indictment, in  
24          some case an arrest warrant and a sentencing sheet  
25          that indicate that he did in fact plead guilty to

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1       these three charges of committing a lewd act on a  
2       minor under that age of sixteen. In fact, when Mr.  
3       Russell was on the stand, he confirmed that he did  
4       come into this courtroom, before Judge Goodstein and  
5       Judge Goodstein's signature is on each of these  
6       sentencing sheets, he did place his hand on that  
7       Bible, plead to tell the whole truth and nothing but  
8       the truth, so help him God admitted to the acts  
9       underlying these three offenses and signed these  
10      sentencing sheets to indicate he in fact pled guilty  
11      to these three charges. So the State would submit  
12      and I don't believe Mr. Shepherd would disagree,  
13      that Mr. Russell has indeed, been convicted of these  
14      three offenses. The second question of course, is  
15      whether or not Mr. Russell has a mental abnormality  
16      or personality disorder that makes him more likely  
17      to commit these acts. And you've heard the testimony  
18      of two experts, Dr. Wadman who was asked by the  
19      Court to perform an evaluation in this case. A  
20      trained, medical psychiatrist and you've also heard  
21      the testimony of Dr. Bill Burke or William Burke.  
22      We who know him call him Bill and he testified that  
23      he performed an evaluation prior to Mr. Russell's  
24      guilty pleas. In the context of her testimony, Dr.  
25      Wadman told you she was asked by the Court to

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1 determine whether or not Mr. Russell does have a  
2 mental abnormality or personality disorder and  
3 whether or not, based on her expertise, and her  
4 experience and the information she received from  
5 this case, whether or not she believed and it was  
6 her opinion that Mr. Russell has a lack of control  
7 over his mental abnormality, if he had one, so that  
8 he would commit future acts of sexual violence. Dr.  
9 Wadman testified that based on all the information  
10 she received and requested, police reports,  
11 statements from witnesses, the sentencing sheets  
12 with the allegations underlying Mr. Russell's  
13 charges, the information she got from Dr. Burke, not  
14 only through his draft report, but also through  
15 telephone communications with him, as well as  
16 anything she requested from the attorney's office,  
17 that based on all of that information, as a trained  
18 psychiatrist, who's done this type of evaluation  
19 over a hundred times; she's testified both for the  
20 State and against the State. That in this case, I  
21 believe she said, to a reasonable degree of medical  
22 certainty that Mr. Russell suffers from pedophilia.  
23 A sexual attraction to children, non exclusive type,  
24 because he also has sexual attraction to adults.  
25 Which Dr. Wadman says is not uncommon. She said,

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1 based on all of that evidence that she received and  
2 to which she testified to to you, that based on that  
3 information, she believed Mr. Russell's conduct was  
4 such that he is likely to do this again. And let's  
5 talk about that a little bit, because that's really  
6 the crux of this case. As a lawyer, I can't tell  
7 what a diagnosis would be; I'm not trained in that.  
8 Dr. Wadman is trained, she's done this a lot, she's  
9 been through a lot of psychiatric training, she's  
10 been board certified in forensic psychiatry, so she  
11 knows what she's doing. She says, okay, Mr. Russell  
12 exhibits pedophilia, but does he lack that control?  
13 Has she and Dr. Burke stated, these cases, these  
14 predictions aren't one hundred percent, the evidence  
15 is not always going to show one hundred percent he's  
16 definitely going to do it again, but she stated, she  
17 stated the best predictor of future behavior is past  
18 behavior. I would submit to you that we would have  
19 to look at that past behavior. What happened? What  
20 was underlying these offenses? How did we get to  
21 here today? In 2008 Dr. Wadman testified that Mr.  
22 Russell entered the home of an individual he knew at  
23 2:30 in the morning to apologize about some  
24 incident. As we have seen, as we have heard through  
25 the testimony, he was engaged at some point, in the

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1 little girl's room, the four year old. And she  
2 reported it to her mother and Mr. Russell was thrown  
3 from the house. At some point he tried to come back  
4 in the house through a window. And then Mr. Russell  
5 was thrown out of the house again and threatened  
6 with a gun. Alright, 2008, one charge, released on  
7 bond. Paid to get out of jail denying these  
8 accusations, was ordered to wear an ankle monitor.  
9 We've heard that he, he then went to live with an  
10 uncle, but the uncle's restrictions upon him,  
11 restrictions upon him, the curfew at 9 o'clock. Get  
12 here to the house, be here with me. He couldn't deal  
13 with those restrictions, that control. Those  
14 factors, which again, are like probation in essence.  
15 You have to live with these rules. He said I can't  
16 do that, so I'm going to go and live somewhere. He  
17 takes up with somebody who's reported to be a known  
18 drug dealer, minor children in the house. He's been  
19 accused of sexually assaulting a four year old and  
20 he lives in a house with minor children. From there,  
21 we get two incidents in 2009; one on a two year old  
22 girl, one on a five year old boy. These are  
23 children. They are children who would subsequently,  
24 be, be evaluated in essence, brought before a  
25 trained person at the child center and asked to tell

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1 their stories. And they told their stories and they  
2 said Mr. Russell did this to me. He had an ankle  
3 monitor on, he knew he was out on bond, yet these  
4 incidents happened. Now, something that, that we've  
5 heard a little bit about today and yesterday, is  
6 that did Dr. Wadman investigate the truth of these  
7 allegations? I will submit to you that she has. I  
8 will submit to you that she has. She had all the  
9 incidents reports, she had all the police reports,  
10 and the other thing she had were these sentencing  
11 sheets, where Mr. Russell, again and I hate to keep  
12 coming back to this, came in, put his hand on the  
13 Bible and said I did these acts. Yet in her  
14 interview of him, he says I didn't do any of these  
15 acts. As an evaluator, was she asked to determine  
16 whether or not Mr. Russell did or did not do these  
17 acts? I will submit to you that that question was  
18 answered by Mr. Russell when he pled guilty. That  
19 is the point of our criminal justice system. When  
20 an individual is accused of any charge, is upon the  
21 State, the Solicitor's office in this case, here in  
22 Dorchester county to prove beyond a reasonable doubt  
23 that an individual has committed those sexual  
24 offenses. That's exactly what happens in the  
25 criminal context, before there's any plea

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1 negotiations, any plea deals, the State bares the  
2 burden of proving beyond a reasonable doubt Mr.  
3 Russell indeed, did do these things. And you'll  
4 often hear about plea deals, and Mr. Russell is, has  
5 you know, indicated that he received a plea deal, he  
6 received a fifteen year sentence, suspended to three  
7 years, five years probation with a lot of  
8 restrictions. And there are a lot of restrictions.  
9 But I would submit to you that, that deal is not  
10 relevant here today. When the Sexually Violent  
11 Predator Act was passed and I told you this  
12 yesterday, the legislature said we must find those  
13 individuals who are most dangerous, who have  
14 committed these acts and who we believe will commit  
15 them again. Regardless of their sentence; they could  
16 have gotten two years, they could have gotten time  
17 served, they could have gotten thirty years. And I  
18 would submit to you, we would still be here today  
19 asking you to answer that question; had Mr. Russell  
20 gone to trial and received any other sentence that  
21 the sentence he received here. I've been through a  
22 lot of schooling and I've taken a lot of tests and I  
23 would submit to you this; my professors, my  
24 teachers, told me on a test, a worksheet, on any  
25 work I do, answer the question presented and that is

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1        what we're asking you to do today. We're asking you  
2        this question, is Bobby Russell a sexually violent  
3        predator? Not a tough question. I'm sorry, it is a  
4        tough question, it is a tough question. Pardon my  
5        speech it's a very tough question. We don't ask a  
6        judge to answer these questions, the State can't  
7        answer them themselves, we don't have that ability.  
8        We ask you, the jury to piece out that information.  
9        To find the truth of that matter. I would submit  
10       that we have shown Mr. Russell has been convicted of  
11       those sexually violent offenses. I would submit that  
12       the only evidence presented is that Mr. Russell does  
13       suffer from a mental abnormality that makes him more  
14       likely to commit acts of sexual violence. I thank  
15       you again for your time in this case. I know it will  
16       be a very difficult question to answer and I wish  
17       you the best of luck. Thank you.

18       The Court:        Mr. Shepherd.

19       CLOSING ARGUMENTS OF MR. SHEPHERD:

20       Mr. Shepherd: Ladies and gentlemen, the State is  
21       absolutely right, this is a very difficult question  
22       to answer. It's very emotionally charged. You heard  
23       things that turn your stomach okay? And we  
24       understand that. We can only look to the evidence  
25       that was presented in making a decision. We have

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1 sentencing sheets, yep, he pled guilty, okay? He  
2 pled guilty. He pled guilty and he was sentenced  
3 any part of his plea he has to admit that he's done  
4 something. Well, we have an expert from the State  
5 who gets up here and is offering an opinion based on  
6 sentencing sheets, based on the Solicitor's file,  
7 based on a few documents she received from Mr.  
8 Russell's criminal attorney. She assumed, based on  
9 the plea that's where we begin the analysis. That's  
10 fair, that's what she's asked to do, but in  
11 determining whether somebody has a mental  
12 abnormality based upon the fact that they pled  
13 guilty, these are the underlying offenses, we have  
14 to admit, yes the qualifying offenses are there,  
15 because he pled guilty. The convictions are there,  
16 but a plea is just that. No evidence ever came  
17 before the criminal court or a jury like yourselves  
18 to decide. Mr. Russell was presented with a plea  
19 from the State and now the State's arguing that  
20 regardless of what the time served or what he pled  
21 to, whether that's relevant or not, they're saying  
22 it's not relevant. Well in this case it kind of is  
23 relevant. In fact, it's very relevant. You've got to  
24 look at the State saying, based on Dr. Wadman, who  
25 met with this man for two hours, read a select

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1 amount of paperwork and issued an opinion based on  
2 that, that this guy, because he pled is going to go  
3 out there and do horrid, horrid things. The State  
4 initially comes to Bobby Russell on the criminal  
5 proceedings with the full opportunity to go after  
6 this guy for forty five years or more as you heard  
7 Mr. Russell state and they bring him three, credit  
8 for time served, it's okay for you to walk out of  
9 here in two or three months and stick to your  
10 probation, the terms of this probation. He's got to  
11 get treatment from Dr. Burke. You heard Dr. Burke  
12 say he treats over two hundred and fifty sexually,  
13 sexual offenders in his treatment program. They're  
14 out there, they're in the neighborhood, he's  
15 treating them, successfully and has been doing so  
16 since 1981 I believe he said. He's been involved in  
17 this type of work. One of the terms of his  
18 probation is to see Dr. Burke. You heard Dr. Wadman  
19 say that Bobby can't be trusted because he pled  
20 guilty to two counts for something that occurred  
21 while he was on bond, wearing an ankle bracelet.  
22 You also heard her say that he was doing drugs. One  
23 of the terms of Bobby Russell's probation is  
24 mandatory drug counseling and mandatory random drug  
25 and alcohol screening. You heard Bobby Russell say

1       that if he violates any provision he goes back to  
2       prison to finish serving out a fifteen year  
3       sentence. That wasn't hanging over his head when he  
4       pled, was out on bond. In fact, Dr. Wadman didn't  
5       think it relevant to look at any of the underlying  
6       evidence. She didn't request and of course, she  
7       wasn't the fact finder. She wasn't there to  
8       determine guilt or innocence, because yes, he had  
9       already pled. But she didn't go out when Mr. Russell  
10      denied actually having done the offense that  
11      determines whether he is a mentally abnormal person  
12      and look for that mitigating evidence that he told  
13      her about. She didn't look for any reports that said  
14      he fingerprints weren't on the window. She didn't  
15      look for any DNA evidence. Of course, she received  
16      the report, but she didn't give it any weight. The  
17      State allowed him to plea to three years and there's  
18      got to be a reason. It's not in evidence, but you  
19      got to think about it. It's reasonable doubt. If  
20      he's such a sexually violent predator, why would the  
21      State have been willing to allow that to begin with?  
22      And then let's look at Dr. Wadman; time and time  
23      again I'd ask her a question and time and time again  
24      she'd shoot me down. She'd shoot me down pretty  
25      good every single time. Because we were looking at

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1 Dr. Burke's assessment. Dr. Burke assessed this guy  
2 with a battery of tests, objective measurements. She  
3 had a copy of his draft report. It was a draft  
4 report. She, she considered one part of it, but  
5 everything else she kept saying no, I didn't  
6 consider it, it was a drat report time and time  
7 again you heard her say that was a mistake; Dr.  
8 Burke told me that was a mistake. What was the first  
9 thing Dr. Burke said when he got on the stand  
10 yesterday? I made two mistakes; I made a mistake on  
11 the date and I made a mistake with a word. And so  
12 we went through that report with Dr. Burke, the  
13 assessment that he did. We went through and bare  
14 with me, the Static 99. You heard Dr. Wadman talk  
15 about the Static 99 that she performed that placed  
16 him at high risk. Okay? Dr. Burke did the same  
17 Static 99 and stated that Bobby was a low to medium  
18 risk over a period of fifteen years. We talked  
19 about the dynamic factors of treatment and  
20 supervision. Dr. Wadman said she didn't even  
21 consider it, because one he wasn't on treatment and  
22 supervision and you know, with the ankle bracelet  
23 issue, she couldn't, she wouldn't go there. He  
24 couldn't be trusted. You heard Dr. Burke say, well  
25 yeah, something like that is typically considered in

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1 an assessment, something he considers. On the  
2 Stable 2007, Dr. Wadman says she doesn't do that  
3 report, didn't look at it and even when confronted  
4 with the low to medium or low nominal. Excuse me,  
5 low to nominal risk, well Dr. Burke, I think that's  
6 a mistake. Dr. Burke gets up there and says yeah,  
7 the Stable 2007 is supposed to produce estimates of  
8 sexual recidivism, violent recidivism and general  
9 criminal recidivism. Dr. Burke said, his assessment  
10 of Bobby Russell said it was low to nominal. He did  
11 the Able screening with significant sexual interest  
12 for Bobby Russell are adult and adolescent females.  
13 You heard Dr. Wadman and Dr. Burke both say that's  
14 normal. Okay? There's no doubt Dr. Wadman is very,  
15 very good at what she does. There's no doubt she's  
16 probably smarter than anybody sitting on this side  
17 of that wall, but Dr. Wadman's report did not take  
18 into account evidence that needed to be considered  
19 in assessing whether or not somebody truly is  
20 mentally abnormal. If a person denies having  
21 committed a crime, even though yes, he admitted, he  
22 admitted by virtue of his guilty plea. Does that  
23 necessarily mean that he actually did it? Okay?  
24 This is a very, very emotional issue. There are a  
25 lot of assumptions that can be made. Evidence was

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1 presented that's pretty damning to Bobby. Litigating  
2 evidence exists. I want you to harken in to what Dr.  
3 Burke was talking about. The highest risk this guy  
4 poses, if we assume this, if we assume the nasty  
5 things in these are true okay? The highest risk he  
6 poses is the initial forty five days after release.  
7 Those initial forty five days after release under  
8 supervision and probation, probation officers,  
9 subject to alcohol and drug screening randomly,  
10 zero tolerance from Judge Goodstein for alcohol and  
11 drugs, mandatory and successful completion of Dr.  
12 Burke's program. He's got to take medication for  
13 any bi-polar disorder or anything like that. You  
14 heard Dr. Burke say it'd probably be helpful if the  
15 guy did go and get a neurology report, because it  
16 would help him with his treatment program. That  
17 Bobby would be mandatorily have to serve. And the  
18 beauty of it all is that Dr. Burke stood there and  
19 told you he wouldn't have a bit of hesitation to  
20 pick up the phone and call probation if this guy  
21 doesn't do what he says he'll do. Okay? So should  
22 Bobby Russell be civilly committed for long term  
23 care and treatment when the only high risk that the  
24 objective assessment from the one guy who did the  
25 bulk of the assessment true, physical, medical

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1 testing said his highest risk is forty five days.  
2 It's a scary thought to make these decisions. Don't  
3 let your emotions and the assumptions the State  
4 asked you to make over these plea deals cloud your  
5 duty to look at this beyond a reasonable doubt. Dr.  
6 Burke time and time again raised the issue of low to  
7 nominal, low to medium over a long period of time.  
8 The only high risk is that immediate time right  
9 afterwards. The time period in which Bobby Russell  
10 is going to be subject to stringent, stringent,  
11 stringent terms of probation and we have a guy  
12 sitting over here today, you got to look past the  
13 shackles, you got to look past the prison garb and  
14 here's why; his criminal sentence is over. It ended  
15 in March and he's still sitting here. He's  
16 involuntarily committed; this is how you're going to  
17 see him until the doctors, yearly he can petition to  
18 be released, but until doctors say it's okay for him  
19 to be released, he can sit there forever. It is  
20 potentially, you heard Dr. Wadman say, no it's not  
21 forever. Potentially it could be. Particularly when  
22 somebody doesn't go in there and say yeah I did it.  
23 He admitted by virtue of his plea, but a man that  
24 goes in there and maintains his innocence, well  
25 that's not treatment. So those are issues that we

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1 think if somebody is going to say that somebody has  
2 a mental abnormality, and you're going to say that  
3 they need to be confined for treatment, but a man  
4 maintains his innocence, even though he took a plea  
5 because it was attractive, because he didn't have to  
6 look at forty five years. It's something to  
7 consider. Okay? Thank you for your time. I just  
8 ask for fairness. Mr. Russell just asks for fairness  
9 and partiality. Think through the evidence, try not  
10 to let your emotions get the best of you and just  
11 think objectively, look at the differences between  
12 Wadman and Burke. There's reasonable doubt in there.  
13 There's reasonable doubt between the position the  
14 State took to begin with and the position the State  
15 is now pursuing. It's two different statutes, but in  
16 the end you got to look at it. Thank you folks,  
17 good luck.

18 The Court: Alright, any reply from the State?

19 Mr. Flores: Very briefly Your Honor.

20 The Court: Alright.

21 REPLY ARGUMENT BY MR. FLORES:

22 Mr. Flores: I just want to come back and speak to you  
23 very briefly about Dr. Burke's report, because  
24 apparently that's where Mr. Russell would like to  
25 place a lot of emphasis and I would too. Dr. Burke,

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1 as I stated in his qualifications yesterday, is well  
2 qualified and recognized by the State. We agree he's  
3 an expert in his field. We've hired him on multiple  
4 cases. But I would submit to you this and he and I  
5 discussed that during cross examination, his report,  
6 his evaluation is very limited in scope. He made no  
7 assumption as to the charges against Mr. Russell.  
8 When asked by Mr. Russell's defense attorney to just  
9 evaluate the guy. So Dr. Burke, nothing wrong with  
10 his report, he was not asked to conduct an  
11 evaluation at this time. In fact he said if I were  
12 to offer an opinion today, well yesterday, as it  
13 were, that would be unethical, I haven't seen him, I  
14 haven't looked at the records Dr. Wadman's looked  
15 at, I haven't done all that research that she had  
16 done. So at this time I cannot offer you an opinion.  
17 And at that time, when I did this previous  
18 evaluation, I couldn't tell you whether or not Bobby  
19 did it or not. That's not what I was asked to do.  
20 So I would submit to you Dr. Burke's report and  
21 assessment, while very practical, because of the  
22 assessments he raised in stating that Mr. Russell's  
23 risks overall very high for forty five days. I think  
24 the factors perhaps changed, because Dr. Burke  
25 hasn't run those assessments again. I think it would

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1 be in the realm of speculation to say that those  
2 recommendations and those assessments in full would  
3 be the same now and it would be doing hard to Dr.  
4 Burke as a doctor to say well his assessments must  
5 be the same now as they were then, because things  
6 have changed. Things are not the exact same as they  
7 were when Dr. Burke first saw him. The only other  
8 point I wish to make with you in this brief rebuttal  
9 is that one of the requirements for Mr. Russell's  
10 probation is to successfully Dr. Burke's sexual  
11 offender program, sexual offender treatment program  
12 and there's not doubt it's a good program; like I  
13 said, he's an expert in his field and he does a  
14 great job. But in order to successfully complete  
15 that program as Mr. Shepherd as said, you have to  
16 admit to your guilt. You have to admit your guilt.  
17 So, he either admits his guilt or he doesn't admit  
18 to it. He's not going to successfully complete Dr.  
19 Burke's program if he doesn't admit his guilt. He  
20 has admitted to his guilt, he has. And to come back  
21 now and says that I'm not guilty is to make a  
22 mockery of our criminal justice system. Look  
23 carefully at the evidence. I thank you again for  
24 your time.

25 The Court: Alright, ladies and gentlemen I know we've

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1 only been in here for about thirty five minutes. Is  
2 there anybody who needs to take a break before I  
3 give you the charge? The charge itself is going to  
4 take about ten minutes, perhaps fifteen minutes or  
5 so. Is there anybody who needs to take a break?  
6 Alright, ladies and gentlemen as you know, the State  
7 has brought this action under what is called the  
8 Sexual Violent Predator Act and that is legislation  
9 enacted by our state legislature. I'm going to talk  
10 to you over the next few minutes about what the  
11 State will have to have proven beyond a reasonable  
12 doubt. By this time, you obviously realize that we  
13 have certain duties to perform. The responsibilities  
14 that you have as I've told you more than once are  
15 the sole judges of the facts like I told you  
16 yesterday. You're the only people in the world who  
17 can make the decision that will lead to the  
18 completion of this verdict formed by your foreperson  
19 and his signature only. Obviously, the witnesses  
20 who testified, testified for you. Rarely, if ever  
21 did they ever turn around and even say a word to me.  
22 That is because their testimony is a factual  
23 standpoint and does not matter to me. I have nothing  
24 to do with this case; it's whether or not in your  
25 view the State has met its burden of proof in this

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1 case. And during the course of this charge I'll be  
2 referring to certain legal principals, things that  
3 you may or may not be somewhat familiar with. For  
4 the purposes of today, you are obligated one hundred  
5 percent to accept the law exactly as I give it to  
6 you. You may come into any given case with a  
7 preconceived notion of what you think the law is or  
8 what you think it ought to be. For today, and for  
9 that matter, any time you're on a jury, you have to  
10 put those notions out of your mind. Because under  
11 your oath you are to accept the law exactly as I  
12 give it to you. Now, in this case the State seeks  
13 civil commitment of the respondent, Mr. Russell, for  
14 long term control, care and treatment in a secure  
15 facility. This proceeding that we're involved in is  
16 not a criminal proceeding seeking incarceration. It  
17 is a civil proceeding, seeking civil commitment and  
18 the State of South Carolina alleges or claims that  
19 the respondent, Mr. Russell is a sexually violent  
20 predator under the laws of this state. The  
21 respondent denies that he is a sexually violent  
22 predator and the burden of proof is therefore solely  
23 only on the State to prove by evidence sufficient to  
24 satisfy each of you beyond a reasonable doubt that  
25 the respondent is a sexually violent predator. The

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1 Defendant or the respondent used interchangeably,  
2 has no burden of proving or disproving anything and  
3 if the State is unable to meet its burden of proof  
4 as to one or more of the elements of this claim, the  
5 respondent is entitled to a finding that he is not a  
6 sexually violent predator. Now, as I will explain to  
7 you in just a few minutes, the burden of proof in  
8 this case is beyond a reasonable doubt, so if I  
9 mention during the course of this charge that the  
10 State does have a burden, that burden of proof is  
11 beyond a reasonable doubt. Now, if I have said or  
12 done anything during the course of this trial that  
13 makes you think that I favor one side over the  
14 other, you can put that out of your mind. Because  
15 obviously I respect your role as the fact finders  
16 and I trust you have not been keeping score as to  
17 what my rulings have been, because my rulings are  
18 not based on what I believe as far as the facts are  
19 concerned; my rulings are based on the law. Now, as  
20 the fact finders in this case, you are responsible  
21 for determining the believability of the witnesses  
22 who have testified. The lawyers have used that term  
23 'believability' but it is also referred to as  
24 credibility. You are the sole judges of the  
25 credibility of the witnesses here who testified. I

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1 mentioned at the beginning of the trial, you can  
2 take anything that is within your perspective of  
3 common sense in determining who to believe and what  
4 to believe. When you watch someone talk everyday,  
5 you are doing that. You are conscious or  
6 subconsciously saying do I believe what he or she is  
7 telling me? And you're using your common sense in  
8 making that determination. Some of the things that  
9 you can use in that regard are what was the manner  
10 and appearance of the witness who testified? Is he  
11 or she hesitant or straight forward in answering  
12 questions? That's also called demeanor. How did the  
13 witness come to know the facts that he or she  
14 testified to? And what was the witness' ability to  
15 know the facts that he or she testified to? You can  
16 take into account also whether or not there was a  
17 reason for a witness to give testimony that helps or  
18 hurts one side over the other. In other words, was a  
19 witness bias or prejudice for the particular outcome  
20 and also ladies and gentlemen you can take into  
21 account whether or not that witness' testimony has  
22 been strengthened or weakened by other evidence  
23 that's in the record? As you know, you can believe  
24 every word of what someone say, you can disbelieve  
25 every word or you can believe parts and object the

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1 rest. And what you don't do, is you don't count of  
2 the number of witnesses for a particular proposition  
3 and say well more people said this so I must believe  
4 that. You know from the exercise of your common  
5 sense that that's not true, you can believe one  
6 witness over twenty or twenty over one, that's  
7 entirely up to you. Now ladies and gentlemen the  
8 fact that testimony in a particular instance has not  
9 been contradicted does not mean you have to believe  
10 it. You give all of the evidence, all of the  
11 testimony the weight you think it's entitled to. You  
12 gauge the credibility of the witnesses in the manner  
13 that I've just explained to you to determine the  
14 truth of the facts offered through that witness.  
15 Now throughout this process you have one objective  
16 and one objective only and that is to seek the truth  
17 from whatever source it might come. You also heard  
18 ladies and gentlemen the testimony of witnesses who  
19 have special knowledge, skill, experience or  
20 training or education in a particular field; we call  
21 those expert witnesses. Typically, in a trial  
22 someone who testifies cannot state opinions, but  
23 there is an exception I mentioned to you yesterday,  
24 through our rules of evidence for someone who is  
25 qualified as an expert. That type of witness can

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1 give opinions and that witness can give the reasons  
2 for those opinions. Now if you consider the  
3 qualifications and the credibility of the expert and  
4 the reasons for those opinions and you give those  
5 things the weight that you think they are entitled  
6 to. And again, as I mentioned with regard to any  
7 witness, including experts, you are not bound by the  
8 opinion of the expert just because it comes from an  
9 expert. Again, you give it the weight that you think  
10 the testimony is entitled. And the value and effect  
11 of expert testimony is to be solely determined by  
12 you. And no opinion of an expert can be accepted in  
13 and of itself as truthful or reliable, but it must  
14 be weighed by you, the jury, and convince your  
15 judgment of its truth. Now ladies and gentlemen, I  
16 mentioned to you earlier that the State does have  
17 the burden of proving its case beyond a reasonable  
18 doubt. I'm going to talk to you in detail about  
19 that right now. So, what is a reasonable doubt in  
20 the law? In the law, a reasonable doubt is the kind  
21 of doubt that would cause an honest and a sincere  
22 and a contentious person who is in search of the  
23 truth, hesitate to act. Now proof beyond a  
24 reasonable doubt in this case is proof that leaves  
25 you firmly convinced that the respondent is a

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1 sexually violent predator. On this earth and in this  
2 world, there are very few things that we know with  
3 absolute certainty. The law does not require the  
4 State to present proof that overcomes every possible  
5 doubt. It does require the State to present the  
6 proof that overcomes every reasonable doubt. Now in  
7 civil cases, in most civil cases, the burden of  
8 proof is by what we call the greater weight or  
9 preponderance of the evidence. In a case like that  
10 it's typically illustrated that the scales of  
11 justice are perfectly equal. The party that has the  
12 burden of proof must tip those scales ever so  
13 slightly in his or her favor to meet a burden by the  
14 greater weight of the evidence. Now, in this type of  
15 case, the burden of proof is beyond reasonable  
16 doubt. The State's burden is more powerful, the  
17 State's proof must be more powerful than simply  
18 tipping the scales ever so slightly. It must be  
19 proof beyond a reasonable doubt. Now, ladies and  
20 gentlemen, if based on your consideration of the  
21 evidence in this case, if you are not firmly  
22 convinced that the respondent has been, has been  
23 demonstrated to be a sexually violent predator, your  
24 verdict must be in favor of the respondent Mr.  
25 Russell. If, based on your consideration of the

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1 evidence you are firmly convinced that the  
2 respondent is a sexually violent predator, you must  
3 return a verdict for the State that he is a sexually  
4 violent predator. Now, ladies and gentlemen  
5 reasonable doubt may arise from evidence which is in  
6 the case or reasonable doubt may arise from the lack  
7 of or absence of evidence in the case. If you,  
8 again, if you are firmly convinced that he is a  
9 sexually violent predator, your verdict must be for  
10 the State. If you believe that there is a real  
11 possibility that he is not a sexually violent  
12 predator, you must give him the benefit of the doubt  
13 and find for the respondent in that regard. Now,  
14 ladies and gentlemen I'm going to talk to you now  
15 about what the State must have proven to you beyond  
16 a reasonable doubt. The elements in this case which  
17 the State must prove beyond a reasonable doubt are  
18 essentially two fold. Number one, the respondent  
19 has been convicted of a sexually violent offense.  
20 And I charge you ladies and gentlemen that  
21 committing a lewd act on a minor, under the age of  
22 sixteen is a sexually violent offense under the laws  
23 of this state. The second thing the State must prove  
24 beyond a reasonable doubt is that the respondent,  
25 Mr. Russell, suffers from a mental abnormality or a

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1 personality disorder that makes him likely to engage  
2 in acts of sexual violence if he is not confined in  
3 a secure facility for long term control, care and  
4 treatment. Now, inherent, or part of these two  
5 elements ladies and gentlemen, is that the State  
6 must prove the requirement that the respondent  
7 mental abnormality or personality disorder causes  
8 him serious difficulty in controlling his behavior.  
9 In other words, the State must prove beyond a  
10 reasonable doubt that the individual, Mr. Russell  
11 suffers from a mental illness from which he cannot  
12 sufficiently control without the structure and care  
13 provided by a mental health facility, rendering him  
14 other wise likely to commit a sexually violent  
15 offense. Now ladies and gentlemen I am going to  
16 define for you some of the terms that I have just  
17 used. The words mental abnormality means a mental  
18 condition effecting a person's emotional or  
19 volitional capacity that predisposes that person to  
20 commit sexually violent offenses. Now this mental  
21 abnormality or personality disorder must cause the  
22 respondent serious difficulty in controlling his  
23 behavior. The words likely to engage in acts of  
24 sexual violence means that the person's propensity  
25 to commit acts of sexual violence is of such a

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1 degree as to pose a menace to the health and safety  
2 of others so that he is dangerous to others. And  
3 again, I remind you that the burden of proof that's  
4 on the State is to prove to your satisfaction beyond  
5 a reasonable doubt that number one, the Defendant  
6 has been convicted of a sexually violent offense as  
7 I've instructed you, and also suffers from a mental  
8 abnormality or personality disorder that makes him  
9 likely to engage in acts of sexual violence if he is  
10 not confined in a secure facility for long term  
11 control, care and treatment. Now ladies and  
12 gentlemen we bring it all together to this point, if  
13 the State has met, in your eyes, its burden of proof  
14 beyond a reasonable doubt and has convinced you  
15 beyond a reasonable doubt as to both of these two  
16 elements, the State is entitled to a finding that  
17 the respondent is a sexually violent predator. If  
18 the State has not met its burden of proof beyond a  
19 reasonable doubt as to either one or both of those  
20 elements, the respondent is entitled to a finding  
21 that he is not a sexually violent predator. Now  
22 ladies and gentlemen I'll mention to you at this  
23 point that your verdict in this case must be  
24 unanimous. That means all of you have to agree.  
25 This is not a majority vote, it is not a 11 to 1, 7

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1 to 5, it must be twelve, zero whatever your verdict  
2 might be. I'm not so much concerned about what your  
3 verdict is, but I do want to make sure that you  
4 understand that yesterday you did swear an oath to  
5 try this case according to the law and evidence, so  
6 help you God. And your responsibilities are just  
7 beginning. You are to go back into the jury room in  
8 just a few minutes and give these issues in this  
9 case, the attention that they deserve. This is the  
10 only day these parties will have in court and so  
11 they expect and they are both entitled to a fair and  
12 impartial trial. The only way that you can give that  
13 is for you to render a verdict that speaks the  
14 truth. Now Mr. Foreman, the verdict form is very  
15 brief. It says at the top has the State of South  
16 Carolina proven beyond a reasonable doubt that Bobby  
17 Russell is a sexually violent predator under the  
18 South Carolina Sexually Violent Predator Act? There  
19 are two answers to that question; yes and no. Yes or  
20 no. Now on the verdict form, of course the order  
21 that these are put in means nothing, but one choice  
22 had to come before the other. You are to discuss  
23 these issues completely and once you are sure that  
24 the verdict is unanimous, you put a check or an X in  
25 the appropriate space beside yes or not then you

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1 sign the verdict form and you date it, knock on the  
2 door and let the Bailiff know that you have reached  
3 a verdict. If, during the course of your  
4 deliberations, you have a question there will be a  
5 note pad available. You simply write the question  
6 down, sign it and tap on the door and let the  
7 Bailiff know that you have a question. Now the law  
8 dictates, number one if I can respond to your  
9 question and number two how I may respond and you  
10 are certainly able to ask a question that you think  
11 are appropriate, but the law guides me in if and how  
12 I can respond. Now, if someone has to excuse himself  
13 or herself during the course of deliberations to use  
14 the restroom, please stop your deliberation until  
15 the person comes back. Also, if someone has to  
16 leave the jury room, first of all, you have to get  
17 my permission to leave and if someone does leave the  
18 jury room you have to stop deliberations until that  
19 person comes back. What you are obligated to do in  
20 this case ladies and gentlemen is to take your  
21 common sense view of the evidence, put it together  
22 with the law as I've charged you and render a  
23 verdict that speaks the truth. In sum, the word  
24 verdict comes from the Latin word which literally  
25 means speak the truth and that's what your verdict

1 must do. The next thing that we'll do ladies and  
2 gentlemen is for you to excuse yourselves and go to  
3 your jury room. You may not begin discussing the  
4 case yet. The rules that we operate under require me  
5 to enquire from the parties number one, if I left  
6 anything out of my charge or if I charged you  
7 anything incorrectly. So for the next few minutes  
8 we'll be covering that. Your signal to deliberate  
9 will be when the Bailiff comes to your door with the  
10 verdict form and the exhibits that have been  
11 introduced into evidence and tells you that you can  
12 begin your deliberations. And again, give the issues  
13 the consideration they deserve and we're looking  
14 forward to hearing your verdict. Please go to your  
15 jury room; you may not begin discussing the case  
16 quite yet. Ms. Tyler, if you could just stand right  
17 out in the hall okay?

18 A: Okay.

19 (Jury break 10:23)

20 The Court: Alright are there any exceptions or  
21 additions from the State?

22 Mr. Flores: Nothing from the State Your Honor.

23 The Court: And from the respondent?

24 Mr. Shepherd: No sir.

25 The Court: Alright as far as the, your exhibit for i.d.

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1 for Dr. Burke, I'm not going to allow that into  
2 evidence. I think that on the one hand he testified  
3 fully about his observations and conclusions and he  
4 was crossed on that. I think that the report itself  
5 would be commutative to the things he did testify  
6 and be somewhat confusing to the jury as to the  
7 things in the report that were not specifically gone  
8 into in cross. So I respectfully sustain the  
9 objection of that. Now as far as the alternate; I  
10 can do one of two things. I can keep her here in a  
11 separate room in case somebody on the jury falls by  
12 the wayside or I can excuse her, come back at two  
13 with the rest of the panel or I can, well those are  
14 about my choices.

15 Mr. Shepherd: I think this jury will be fine. I think  
16 there would be no reason to have her held at this point.

17 The Court: Alright, Mr. Shepherd?

18 Mr. Shepherd: I have no objection to that.

19 The Court: Okay, I'll have her come in and I'll tell  
20 her the panel's coming back at 2:00. If y'all can  
21 get with the Court Reporter to make sure these  
22 exhibits are in order.

23 (Alternate Dismissed)/ (Deliberations Begin 10:27)

24 The Court: Thank you. Alright. Mr. Flores, I believe  
25 you're by yourself; just hang tight in case the jury

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1 has a question or a verdict. Mr. Shepherd, I know, I  
2 know you have some folks here behind you and I just  
3 ask you ladies and gentlemen to be kind of close at  
4 hand. If the jury has a verdict or a question I'll  
5 certainly wait a reasonable time for you to come  
6 back, but not unusually long. I had a lawyer one  
7 time in Sumter who decided to go to Shoney's, to the  
8 buffet and he relayed word that he'd be back after a  
9 while. Well, he left his food, it got cold and he  
10 never got to eat. Alright, thank you.

11 Mr. Flores: Thank you Your Honor.

12 The Court: Alright I was told the jury has a verdict. Is  
13 the State ready?

14 Mr. Flores: Oh, yes the State is ready.

15 The Court: Is the respondent ready?

16 Mr. Shepherd: Yes sir.

17 The Court: Bring in the jury.

18 (Jury enters courtroom 10:59)

19 The Court: How many do we have?

20 Bailiff: Twelve.

21 The Court: Alright, I'm told Mr. Foreman that you've  
22 reached a verdict?

23 Foreman: Yes Your Honor we have.

24 The Court: And is the verdict unanimous?

25 Foreman: Yes Your Honor.

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1 The Court: Okay, hand the form and the evidence to  
2 the Bailiff. Alright, I'll review the verdict form.  
3 The one question has the State of South Carolina  
4 proven beyond a reasonable doubt that Bobby Russell  
5 is a sexually violent predator under the South  
6 Carolina Sexually Violent Predator Act? We the jury  
7 unanimously answer the question as follows: Yes,  
8 Bobby Russell is a sexually violent predator. Now  
9 Mr. Foreman and ladies and gentlemen of the jury,  
10 this is, if this is your verdict and it's still your  
11 verdict, please raise your right hand. Alright the  
12 record would show that all twelve jurors have raised  
13 their right hand. Alright, is there anything from  
14 the State before the jury is released?

15 Mr. Flores: No Your Honor.

16 The Court: Anything from the respondent before the  
17 jury is released?

18 Mr. Shepherd: No sir.

19 The Court: Alright ladies and gentlemen that  
20 concludes your service for this particular case.  
21 Please note that no one can quarrel with your  
22 verdict. I would ask you to do one more thing  
23 concerning this case, do not discuss this case,  
24 including your service about the verdict. Also, if  
25 someone wants to talk to you about the case you can

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1 tell them you can't talk about it for the rest of  
2 this week. After your service this week is over you  
3 can talk about this case all that you want. You  
4 don't have to, but if someone approaches you later  
5 on and wants to talk to you about your verdict or  
6 anything about this case and you don't want to talk  
7 about it, just tell the person that. You don't have  
8 to give any reason for it. If that person persists,  
9 you get their name and let the Clerk of Court know  
10 and she will relay that to me and then I'll take  
11 care of that. Now the rest of the panel is coming  
12 back today at two o'clock. We'll be picking a jury  
13 at that time. You are released until two pm and I  
14 look forward to seeing you at around that time.  
15 Thank you very much.

16 (Jury excused 11:02)

17 The Court: Alright, any motions from the respondent?

18 Mr. Shepherd: Not at this time Your Honor.

19 The Court: Alright, I'll allow him ten days to make  
20 any motions that you see fit.

21 Mr. Shepherd: Thank you.

22 The Court: I won't calculate the days for you, but  
23 keep in mind that today is November the first.

24 Alright what is the, is the operative section Mr.

25 Flores 44-48, 100?

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1 Mr. Flores: That's correct Your Honor.

2 The Court: Alright what is the State's position on  
3 the putting the jury's verdict in place as far as  
4 the statute?

5 Mr. Flores: As a result of the verdict coming back that  
6 Mr. Russell is a sexually violent predator, we do  
7 have a proposed order of commitment denoting that in  
8 writing. I have a copy of that for Mr. Shepherd.

9 The Court: Alright. Alright I'll note that 44-48-100  
10 provides that if a court of jury finds that a person is a  
11 sexually violent predator, the person must be committed  
12 to the Department of Mental Health for control, care and  
13 treatment until such time as the mental abnormality or  
14 personality disorder has so changed that he's safe to be  
15 at large and released pursuant to statute. Is that still  
16 the operative code section Mr. Flores?

17 Mr. Flores: Yes Your Honor.

18 The Court: Alright Mr. Shepherd do you have any, I  
19 know you disagree with the jury's verdict, but do  
20 you have any procedural questions or objections to  
21 the order of commitment?

22 Mr. Shepherd: No, the order of commitment looks pretty  
23 standard.

24 The Court: Alright, gentlemen, I appreciate the way that  
25 you've tried your case. I will sign this order. Mr.

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1 Russell I trust that you will note that this is  
2 simply one step in the process. Your lawyer will  
3 advise you about any and all rights that you have,  
4 including, but not limited to the right to petition  
5 for your release under the specific provisions of  
6 the statute. Is that after a year? Is that correct  
7 Mr. Flores or at such other time as they may think  
8 that he is safe?

9 Mr. Flores: I believe the statute provides an annual,  
10 yearly review. I believe that code section is 44-48-  
11 110. However, at any time that the mental ...

12 The Court: The department?

13 Mr. Flores: The department does believe Mr. Russell's  
14 condition has changed, he's completed the program, a  
15 discharge board would meet to make recommendations.  
16 The director of the Department of Mental Health  
17 authorizes Mr. Russell to petition so that could  
18 happen at any point, not limited to that yearly  
19 hearing.

20 The Court: Alright. Okay, I'll issue the order as  
21 presented by the State and thank you very much for  
22 your participation.

23 Mr. Flores: Thank you Your Honor.  
24  
25

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Dorchester  
STATE VS.

AKA:

Race:                      Sex: M Age: 35DOB:                      SS#:                     Address:                     Summerville, SC 29483DL#:                      SID#:                     INDICTMENT/CASE#: 2009GS18-0990A/W#: M118482Date of Offense: 5/9/2009S.C. Code §: 16-15-140CDR Code #: 2468PLAINTIFF'S  
EXHIBIT10/31/11  
MRS

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was  
TO: Lewd Act, Committing or Attempting Lewd Act Upon Child Under 16☐ CONVICTED OF or ☒ PLEADSin violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. BK (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: D.A. Harrison 7867 Bobby Russell Jr 76970  
Bell, Harrison SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed 5 yearsand/or to pay a fine of \$                     ; provided that upon the service of                      days/months/years and/or payment 5of \$                     ; 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 by the State Department of Corrections.☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Child Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Det. Waives Hearing ☐ OrderedTotal: \$                      plus 20% fee: \$                     Payment Terms:                     ☐ set by SCDPPPS                     Recipient:                     

\*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47-12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90-7 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2009)

PRESIDING JUDGE

Judge Code:                     Sentence Date: 11-8-2010

CERTIFIED COPY

2011 JUN 13 PM 12:03

DO NOT WRITE IN THESE SPACES

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 FundOther: Zero tolerance foralcohol & illegal drug\* Must take prescribedmedication for 60 days\* Must report to SSK of prob☐ Appointed PD or appointed other counsel, §47.12

requires \$500 be paid to Clerk during probation.

Cheryl Pham

Bonnie L. My

\* May not be in the presence of minor children  
\* Must successfully complete treatment (KMS & etc.)

STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER )

INDICTMENT  
2009GS18-0990

At a Court of General Sessions, convened on August 3, 2009 the Grand Jurors of  
Dorchester County present upon their oath:

**CRIMINAL SEXUAL CONDUCT WITH MINOR FIRST DEGREE**

That in Dorchester County, South Carolina, on or about May 9, 2009, the  
Defendant, Bobby Russell Jr, did willfully and unlawfully assault the  
victim, Minor 2, with the intent to commit a sexual  
battery described as digitally penetrated the female victim age 2, and the said  
victim was less than 11 years old. This offense being in violation of Section 16-3-  
655, of the South Carolina Code of Laws, as amended.

CERTIFIED COPY  
2011 JUN 13 PM 12:03  
Clerk of Court  
DORCHESTER COUNTY

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

B. Harrison Bell  
Harrison Bell, Solicitor

ARREST WARRANT

M-118482

STATE OF SOUTH CAROLINA

☒ County/

☐ Municipality of

Dorchester

THE STATE

against

Bobby Russell, Jr

Address:

Summerville, SC 29483-

Phone:

SSN: 2

Sex: M

Race:

Height: 5 10

Weight: 160

DL State: SC

DL:

Agency ORI #: SC0180000

Prosecuting Agency: Dorchester County Sheriff

Prosecuting Officer: T Morgan - 7963

Offense: Sex / Criminal sexual conduct with minor or attempt - victim under 11 yrs of age - First degree

Offense Code: 0385

Code/Ordinance Sec: 16-03-0655(A)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/

☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Bobby Russell, Jr.  
May 30th, 2009

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions

101 Ridge Street

St. George, SC 29477

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/

☐ Municipality of

Dorchester

Personally appeared before me the affiant T Morgan

being duly sworn deposes and says that defendant Bobby Russell, Jr

did within this county and state on or about

05/09/2009 - 5/20/09

violate the criminal laws of the

State of South Carolina (or ordinance of

☒ County/

☐ Municipality of

Dorchester

In the following particulars:

DESCRIPTION OF OFFENSE Sex / Criminal sexual conduct with minor or attempt - victim under 11 yrs of age - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

Bobby Russell Jr. digitally penetrated the vagina of 2 year of age female at . The victim disclosed to her mother by physically demonstrating that "Bobby" had put his fingers into her vagina, after her mother found child pornography on 05/22/09 on a computer that Russell had been using. While at MUSC on 05/23/09, the victim indicated that he did it when it was dark outside and in her bedroom. The victim's mother provided a statement indicating that the victim's behavior had changed drastically a few days after Russell started staying at their home around 05/09/09. She began to wet her bed after having been fully potty trained for a yr, and refused to go to the bathroom when he was present. She refused to take baths or showers, which she had previously enjoyed. She also started holding her vaginal area stating that "it hurts". The victim's mother also found a baby photo album of the victim out in the bedroom that the defendant was staying in. Russell has a history of CSC with a Minor 1st degree.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/

☐ Municipality of

Dorchester

Affiant's Address 100 Sears Street

Saint George, SC 29477-

Affiant's Telephone

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 5/9/2009

defendant Bobby Russell, Jr

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/

☐ Municipality of

Dorchester

) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor or attempt - victim under 11 yrs of age - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me

OR 05/23/2009

Signature of Issuing Judge

Javice Y. Simmons

Judge Code: 7094

(L.S.)

Judge's Address Troy Knight Judicial Complex

Summerville, SC 29483-4707

Judge's Telephone (843)832-0370

Issuing Court: ☒ Magistrate

☐ Municipal

☐ Circuit

128

# General Sessions Tracking Sheet

## Indictment # 0000GS18

Name: Russell, Bobby Jr

AKA:

Addr:

29483

SSN#

Sex: M Race:

DOB:

DL#

Warrant/Ticket # M118482

Date of Arrest: 05/30/2009

Date of Offense: 05/09/2009

Date Rev by Clerk 06/08/2009

Magistrate: Clerk Of Court C P, G S, And Family Court

Counts: Code: 0385/Sex / Criminal sexual conduct with minor or attempt - victim under 11 yrs of age - First degree

Indictment # 0000GS1809-990

## Disposition Information

1. Transmitted to SOL & SCCA:
2. Disp Received by Clerk:
3. Date of Disposition:

11-8-10

Disposition

- |                                     |                             |          |  |
|-------------------------------------|-----------------------------|----------|--|
| <input checked="" type="checkbox"/> | 1. Guilty plea              | Explain: |  |
| <input type="checkbox"/>            | 2. Trial - guilty           | Explain: |  |
| <input type="checkbox"/>            | 3. Trial - not guilty       | Explain: |  |
| <input type="checkbox"/>            | 4. Dism/Not Pros/Pros Ended | Explain: |  |
| <input type="checkbox"/>            | 5. Judicial Commitment      | Explain: |  |
| <input type="checkbox"/>            | 6. Judicial Dismissal       | Explain: |  |
| <input type="checkbox"/>            | 7. Remanded                 | Explain: |  |
| <input type="checkbox"/>            | 8. Dismissed at Prelim      | Explain: |  |
| <input type="checkbox"/>            | 8. No Bill                  | Explain: |  |
| <input type="checkbox"/>            | 9. Failure to Appear        | Explain: |  |
| <input type="checkbox"/>            | 10. Other                   | Explain: |  |

CERTIFIED COPY  
 2011 JUN 13 PM 12:03  
 CLERK OF COURT  
 BRONX COUNTY

Judge:

Goodstein

Defense Atty:

Paul Urrichio / Chad Fuller

Court Reporter:

Dorale Kelly

Solicitor:

H. Bell

Counts:

Code:

2468

Sentence:

15 years susp upon service of 3 years +  
 5 years probation.

500 hrs community service  
 must register sex offender

concurrent  
 OTS

no contact w victims directly or indirectly  
 no presence minor children  
 Central registry could abuse

## STATE OF SOUTH CAROLINA

## IN THE COURT OF GENERAL SESSIONS

COUNTY OF  
STATE

Dorchester

VS.

Bobby Russell Jr

AKA:

Race:

Sex:

DOB:

SSN:

Address:

DL#:

In disposition of the said indictment comes now the Defendant who was  
TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

INDICTMENT/CASE#: 2009GS18-1097

A/W#: M118615

Date of Offense: 5/9/2009

S.C. Code § 16-15-140

CDR Code #: 2468

PLAINTIFF'S  
EXHIBIT

MR8

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSIn violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468  
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-43  
whichever 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.APPEARANCE: RS. JR. RMY 7263 SC Bar# 76970  
Bell, Harrison Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Juvenile Offender Act not to exceed 5 years  
and/or to pay a fine of \$ 3; provided that upon the service of 3 days/months/years and/or payment  
of \$ 3; plus costs and assessments as applicable; the balance is suspended with probation for 5months/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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-43 (Criminal  
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

\*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47-12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BU) Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90-7 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2009)

PTUP

500 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  
payments of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$47.12  
requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

2-11-0-2010

T Morgan

Dorchester County Sheriff

ARREST WARRANT NUMBER  
M118815

Arrested: June 8, 2009

ACTION OF GRAND JURY

TRUE BILL

DATE 7/30/09

Foreperson of Grand Jury  
Date: July 30, 2009

VERDICT

Foreperson of Petit Jury  
Date:

The State of South Carolina  
County of DORCHESTER

COURT OF GENERAL SESSIONS

August 3, 2009 TERM

THE STATE  
vs.

Bobby Russell Jr

Indictment for

LEWD ACT, COMMITTING OR  
ATTEMPTING LEWD ACT UPON CHILD  
UNDER 16

SC Code: 16-15-140

rights, I hereby waive presentment to the  
Grand Jury.

Defendant

I  
hereby appear in my own proper person  
and plead guilty to the within indictment  
or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORDED  
2009 JUL 31 AM 09:10  
CHERYL GRAHAM  
CLERK OF COURT  
DORCHESTER COUNTY  
2009 OCT 26 PM 1:38  
CERTIFIED COPY

11/09/2012 10:01  
B438320178

CERTIFIED COPY

2011 OCT 26 PM 1:38

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF DORCHESTER

2009GS18-1097

*Charles W. Bell*  
CLERK OF COURT  
DORCHESTER COUNTY

At a Court of General Sessions, convened on August 3, 2009 the Grand Jurors of  
Dorchester County present upon their oath:

**LEWD ACT, COMMITTING OR ATTEMPTING LEWD ACT UPON CHILD  
UNDER 16**

That in Dorchester County, South Carolina, on or between May 9, 2009 and May  
20, 2009, the Defendant, Bobby Russell Jr, being over the age of 14 years old,  
did willfully and lewdly commit or attempt to commit a lewd or lascivious act upon  
the body or its parts of Minor 1 a child under the age of sixteen (16) years  
with the intent of arousing, appealing to, or gratifying the lust or passions or  
sexual desires of himself or the child. This offense being in violation of Section  
16-15-140, of the South Carolina Code of Laws, as amended.

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

*B. H. Bell*  
Harrison Bell, Solicitor

M-118615

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Dorchester

THE STATE  
against

Bobby Russell, Jr

Address

Summerville, SC 29483-

Phone \_\_\_\_\_ SSN \_\_\_\_\_  
Sex M Race \_\_\_\_\_ Height 5 10 Weight 160DL State SC DL # \_\_\_\_\_DOB \_\_\_\_\_ Agency ORI # SC0180000Prosecuting Agency Dorchester County SheriffProsecuting Officer T Morgan - 7963Offense Sex Lewd Act. committing or attempting lewd act upon child under 16 (June 4, 1996)Offense Code 2-468Code/Ordinance Sec 16-15-0140

This warrant is CERTIFIED FOR SERVICE of the

☐ County/ ☐ Municipality of

is to be arrested and brought before me to be dealt with according to the law

(L.S.)

Date

RETURN

A copy of this arrest warrant was delivered to

defendant Bobby Russell JR.on 06/01/2009

RETURN WARRANT TO:

General Sessions  
101 Ridge Street  
St. George, SC 29477

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

April 21, 2003  
SCCA 510

Dorchester

Personally appeared before me the affiant T Morganbeing duly sworn deposes and says that defendant Bobby Russell, Jrdid within this county and state on or about 05/09/2009

violate the criminal laws

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality ofDorchester

in the following particulars

DESCRIPTION OF OFFENSE Sex Lewd Act. committing or attempting lewd act upon child under 16 (June 4, 1996)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

Between the dates of 05/09/09 and 05/20/09 Bobby Russell Jr. committed a lewd act on a 5 year old male at 1 Summerville. In that he pulled the victims pants down and started to fondle the victim's penis with his hand. The victim's 2 year old sister had been sexually assaulted by the suspect, so the victim was scheduled for an interview at the Dorchester Children's Center. During the forensic interview he disclosed that the suspect had pulled down his pants and "played" with his penis using his hand. The defendant has a history of Criminal Sexual Conduct with a Minor 1st degree in November, 2008.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Dorchester

Affiant's Address 100 Sears Street  
Saint George, SC 29477.

Affiant's Telephone \_\_\_\_\_

## ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 5-9-2009 defendant Bobby Russell, Jr

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Dorchester

as set forth below.

DESCRIPTION OF OFFENSE: Sex Lewd Act. committing or attempting lewd act upon child under 16 (June 4, 1996)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him/her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 06/01/2009Judge's Address Troy Knight Judicial Complex  
Summerville, SC 29483-4707  
Judge's Telephone (843) 832-0370Issuing Court ☒ Magistrate ☐ Municipal ☐ CircuitJudge Code 7173

10 Sup. 2403 2403 prob. Nicholas J. Varn

S. 1500

STATE OF SOUTH CAROLINA

COUNTY OF  
STATE

Dorchester

VS.

Bobby Russell Jr

AKA:

Race:

Sex: M

Age: 35

DOB:

SS#:

Address:

29483

DL#:

SID#:

In disposition of the said indictment comes now the Defendant who was  
TO: Lewd Act, Committing or Attempting Lewd Act Upon Child Under 16

IN THE COURT OF GENERAL SESSIONS

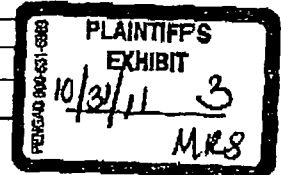
INDICTMENT/CASE#: 2009GS18-1275

A/W#: 2009DOR10

Date of Offense: 11/2/2008

S.C. Code §: 16-15-140

CDR Code #: 2468



SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSIn violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468  
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentation to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Bell, Harrison

SC Bar# 7067

Defendant

Attorney for Defendant

SC Bar# 76970

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$ 3; provided that upon the service of 3 days/months/years and/or payment

of \$ 0; plus costs and assessments as applicable\*; the balance is suspended with probation for 5

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

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waiver Hearing ☐ Ordered

Total: \$ 300 plus 20% fee: \$ 60

Payment Terms:

☐ set by SCDPPPS

Recipient:

\*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47-12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2009)

PTUP

300 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 \$ 25.00 beginning

\$ 0 paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

2011 JUN 13 PM 12:00  
 CERTIFIED COPY  
 CLERK OF COURT  
 DORCHESTER COUNTY

872 2009 GS-18-970

Cheryl Maham

Bonnie Kelly

134

STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER )

INDICTMENT  
2009GS18-1275

At a Court of General Sessions, convened on August 3, 2009 the Grand Jurors of  
Dorchester County present upon their oath:

**LEWD ACT, COMMITTING OR ATTEMPTING LEWD ACT UPON CHILD  
UNDER 16**

That in Dorchester County, on or about November 2, 2008, the Defendant,  
Bobby Russell Jr, being over the age of 14 years old, did willfully and lewdly  
commit or attempt to commit a lewd or lascivious act upon the body or its parts of  
, a child under the age of sixteen (16) years with the intent of  
arousing, appealing to, or gratifying the lust or passions or sexual desires of  
himself or the child. This offense being in violation of Section 16-15-140 of the  
South Carolina Code of Laws, as amended.

CERTIFIED COPY  
2011 JUN 13 PM 12:03  
CLERK OF COURT  
DORCHESTER COUNTY

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

B. A. - RJM

Harrison Bell, Solicitor

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS  
CASE NO. 2011-CP-18-394

IN THE MATTER OF THE CARE  
AND TREATMENT OF  
BOBBY RUSSELL,  
RESPONDENT.

**ORDER FOR EVALUATION  
PURSUANT TO THE SEXUALLY  
VIOLENT PREDATOR ACT**

2011 MAR -7 PM 2:12

This matter comes before me on petition of the State of South Carolina for an order requiring the Respondent, Bobby Russell, to submit to an examination and to be detained in an appropriate secure facility pending a trial, pursuant the Sexually Violent Predator Act (S.C. Code Ann. Sections 44-48-10 *et seq.*). A Probable Cause hearing was held on March 3, 2011 in St. George; the State was represented by Assistant Attorney General Lloyd V. Flores, Jr., and the Respondent was personally present and represented by Andrew T. Shepherd, Esquire.

I have considered the showing made in respect to this matter and am of the opinion that probable cause exists to find that the Respondent is a Sexually Violent Predator as defined by S.C. Code Ann. Section 44-48-30.

**THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED:**

That the Respondent shall be:

- (a) Upon completion of his criminal sentence at the South Carolina Department of Corrections, transferred to and confined in the Dorchester County Detention Center until a final disposition of this action; and
- (b) Transported to an appropriate facility of the South Carolina Department of Mental Health for an evaluation to determine whether the Respondent suffers from a mental abnormality or personality disorder that makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

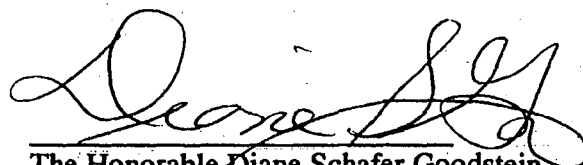
The court-ordered examination shall be requested by the Office of the Attorney General of South Carolina and scheduled by the examining facility as soon as possible. The Respondent is to arrive at the examining facility at the time established by confirmed appointment with the

staff of the examining facility. The Respondent continues under jurisdiction of this Court.

The qualified expert appointed by the Court at this Probable Cause hearing to examine the Respondent is Peggy C. Wadman, M.D., MPH.

Within five days of the receipt of the written report of the examination by the Office of the Attorney General of South Carolina, said office shall make a copy of such examination available to the Respondent's attorney.

**AND IT IS SO ORDERED.**



The Honorable Diane Schafer Goodstein,  
Presiding Judge for the First Judicial Circuit  
Court of Common Pleas

March 7, 2011  
St. George, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF DORCHESTER )  
 )  
 IN THE MATTER OF THE CARE )  
 AND TREATMENT OF )  
 BOBBY RUSSELL, )  
 RESPONDENT. )

IN THE COURT OF COMMON PLEAS  
 FIRST JUDICIAL CIRCUIT

CASE NO. 2011-CP-18-394

ORDER OF COMMITMENT

2011 NOV - 1 AM 11:01  
 CLERK OF COUNTY

The trial of this case was held in the County of Dorchester in the Court of Common Pleas the week of October 31, 2011. A jury of citizens from Dorchester County heard this case pursuant to a request for a jury trial filed by the State. Assistant Attorney General Lloyd V. Flores, Jr., represented the State. Andrew T. Shepherd, Esquire, represented the Respondent. The jury having heard the presentation of the evidence made the following findings of fact pursuant to South Carolina Code Sections 44-48-90 and 44-48-100:

The State has proven beyond a reasonable doubt that Respondent, Bobby Russell, is a sexually violent predator as that term is defined in South Carolina Code Section 44-48-30.

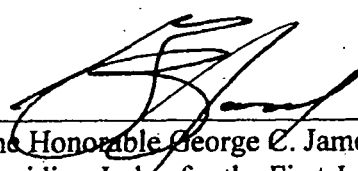
NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT

(a) Respondent is committed to the Department of Mental Health for his long-term control, care and treatment;

(b) Respondent is to be detained in the Dorchester County Detention Center and transported, as soon as possible, by the Sheriff of Dorchester County to a secure facility of the Department of Mental Health at 4460 Broad River Road, Columbia, SC 29210. The Sheriff is to transport Respondent on such scheduled date as the Sheriff's Office coordinates with the Department of Mental Health.

AND IT IS SO ORDERED.

Nov. 1, 2011  
 St. George, South Carolina

  
 The Honorable George C. James, Jr.,  
 Presiding Judge for the First Judicial  
 Circuit Court of Common Pleas

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )  
 )  
IN THE MATTER OF THE CARE )  
AND TREATMENT OF )  
BOBBY RUSSELL, )  
RESPONDENT. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-18-394

**VERDICT FORM**

Has the State of South Carolina proven beyond a reasonable doubt that Bobby Russell is a sexually violent predator under the South Carolina Sexually Violent Predator Act?

We, the jury, unanimously answer the question as follows:

☒

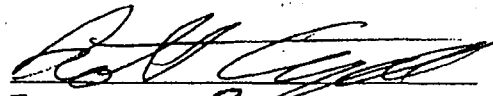
YES, Bobby Russell is a Sexually Violent Predator.

☐

NO, Bobby Russell is not a Sexually Violent Predator.

Nov. 1, 2011  
St. George, South Carolina

Foreperson

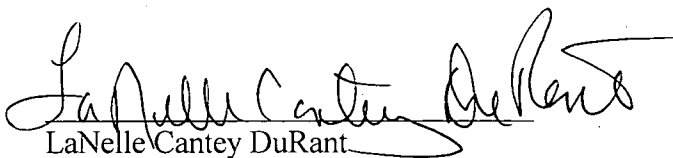
  
Scott E. Angell

2011 NOV - 1 11:01  
CLERK OF COURT  
DORCHESTER COUNTY

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 21st, 2013



LaNelle Cantey DuRant  
Appellate Defender

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

ATTORNEY FOR APPELLANT