

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable William H. Seals, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF MICAH A. BILTON,

APPELLANT

 ORIGINAL

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SC Court of Appeals

APPELLATE CASE NO. 2017-001464

RECORD ON APPEAL

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JUNE 15 – 16, 2017	1
PRE-TRIAL MOTIONS	15
PROFFER TESTIMONY	
AMY C. SWAN	
Direct Examination by Mr. Morrow	22
Cross Examination by Mr. Falk	30
RULING BY THE COURT	40
OPENING STATEMENT BY MR. MORROW	45
OPENING STATEMENT BY MR. FALK	48
TESTIMONY	
AMY C. SWAN	
Direct Examination by Mr. Morrow	53
Cross Examination by Mr. Falk	88
Redirect Examination by Mr. Morrow	111
Recross Examination by Mr. Falk	114
MOTION FOR DISMISSAL	115
RULING BY THE COURT	115
TESTIMONY (CONTINUED)	
BREANNA COOK	
Direct Examination by Mr. Falk	117
Cross Examination by Mr. Morrow	120
JOHN COOK	
Direct Examination by Mr. Falk	121
Cross Examination by Mr. Morrow	122
Redirect Examination by Mr. Falk	123

MICAH BILTON	
Direct Examination by Mr. Falk	124
Cross Examination by Mr. Morrow	136
Redirect Examination by Mr. Falk.....	139
MOTION FOR DIRECTED VERDICT AND RENEWAL OF ALL PREVIOUS MOTIONS.....	141
RULING BY THE COURT.....	141
CLOSING ARGUMENT BY MR. MORROW	142
CLOSING ARGUMENT BY MR. FALK	148
CHARGE ON THE LAW	159
VERDICT	168
STATE’S EXHIBIT #1.....	170
STATE’S EXHIBIT #2.....	174
ORDER OF COMMITMENT (JUNE 16, 2017).....	177
CERTIFICATE OF COUNSEL	181

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
2015-CP-26-08535

IN THE MATTER OF THE)
CARE AND TREATMENT OF)
) TRANSCRIPT OF RECORD
MICAH ALLEN BILTON,)
) June 15-16, 2017
Respondent.)

B E F O R E:

Honorable William H. Seals
Horry County Courthouse
Conway, South Carolina

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1	<u>I N D E X</u>	
2	<u>JUNE 15, 2017</u>	<u>Pg.</u>
3	Voir Dire	4
4	Jury Selection	12
5	By the Court	14
6	Motions	15
7	Amy C. Swan	
8	Direct by Morrow	22
9	Cross by Falk	30
10	Ruling of Court	40
11	By the Court	42
12	Opening Statement by Morrow	45
13	Opening Statement by Falk	48
14	Amy C. Swan	
15	Direct by Morrow	53
16	Voir Dire by Falk	56
17	Direct by Morrow	57
18	Cross by Falk	88
19	Redirect by Morrow	111
20	Recross by Falk	114
21	Motions	115
22	<u>JUNE 16, 2017 - DAY TWO</u>	
23	Breanna Cooke	
24	Direct by Falk	116
25	Cross by Morrow	119

In the Matter of Micah Allen Bilton - 2015-CP-26-08535

3

INDEX

1	<u>I N D E X</u>	
2		<u>Pg.</u>
3	John Cooke	
4	Direct by Falk	121
5	Cross by Morrow	122
6	Redirect by Falk	123
7	Micah Allen Bilton	
8	Direct by Falk	124
9	Cross by Morrow	136
10	Redirect by Falk	139
11	Motions	141
12	Closing by Morrow	142
13	Closing by Falk	148
14	Charge to Jury	159
15	By the Court	166
16	Verdict of Jury	167
17	By the Court	168
18	Certificate of Court Reporter	170

20	<u>E X H I B I T S</u>	
21	<u>No.</u>	<u>ID</u> <u>EV</u>
22	S1 Indictment Sentencing	64
23	S2 Indictment Sentencing	68

24

25

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
VOIR DIRE

4

1 **(JUNE 15, 2017 - DAY ONE)**

2 VOIR DIRE:

3 THE COURT: Good morning. At this time, I need to select
4 jury for a particular case. In order to do that, I need to
5 ask you a series of questions and I need for you to remember
6 two things. One, you're under oath and two, if any question
7 applies for you, I need for you to stand and I need for you to
8 respond.

9 The first question is -- I'm gonna tell you a little bit
10 about the case. It is in the matter of the Care and Treatment
11 of Micah Allen Bilton, Respondent. In this case the State of
12 South Carolina alleges that Mr. Bilton is a sexually violent
13 predator and seeks the involuntary civil commitment of Mr.
14 Bilton for the long-term, control, care, and treatment in a
15 secure facility in Columbia, South Carolina. Mr. Bilton
16 denies these allegations and has requested a trial.

17 Now in this regard, has any member of the jury panel
18 heard anything about this case, read anything about this case,
19 talked to anybody about this case; do you know have any
20 knowledge about this case no matter how insignificant you
21 think may think it is? I need for you to stand and respond.

22 (REPORTER'S NOTE: No response.)

23 THE COURT: No one stood.

24 And the Respondent, Mr. Micah Allen Bilton, would you
25 please stand? All right. You may be seated. Thank you.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
VOIR DIRE

5

1 Is any member of the jury panel related by blood or
2 marriage or has a close personal or social relationship with
3 the Respondent, Micah Allen Bilton? If so, please stand.

4 (REPORTER'S NOTE: No response.)

5 THE COURT: All right. No one stood.

6 And the attorney for the State of South Carolina,
7 Christopher Morrow, if you'd stand and introduce yourself.

8 MR. MORROW: Ladies and gentlemen, my name is Christopher
9 Morrow. I work for the South Carolina Attorney General's
10 office based out of Columbia and I'm originally from Duncan,
11 South Carolina, right outside of Spartanburg.

12 THE COURT: Thank you.

13 Is any member of the jury panel related by blood or
14 marriage or has a close personal or social relationship with
15 Mr. Morrow or has been represented by him at any point in
16 time? If so, please stand.

17 (REPORTER'S NOTE: No response.)

18 THE COURT: All right. No one stood.

19 Mr. Falk, if you'd stand and introduce yourself and any
20 members of your firm.

21 MR. FALK: I'm James Faulk. I have a practice in
22 Charleston, South Carolina. I'm representing Mr. Bilton here
23 today. My wife at time to time helps me in the office. She
24 complains that I never take her anywhere, so we drove up to
25 Conway this morning.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 6
VOIR DIRE

1 THE COURT: All right. Why don't you have your wife
2 stand up, if you would. And your name is?

3 MS. FAULK: Morgan Faulk.

4 THE COURT: Thank you. Is any member of the jury panel
5 related by blood or marriage or has a close personal or social
6 relationship with Mr. Falk or his wife? If so, please stand.
7 Or, has been represented by him at any point in time? If so,
8 please stand.

9 (REPORTER'S NOTE: No response.)

10 THE COURT: All right. No one stood.

11 The witnesses in this case on behalf of the State of
12 South Carolina will be a Dr. Amy Swan, and the witnesses on
13 behalf of the Defendant will be Breanna Cook and John Cook.

14 In this regard, has any member of the jury panel related
15 by blood or marriage or has a close personal or social
16 relationship with any of the witnesses in this case? If so,
17 please stand.

18 (REPORTER'S NOTE: No response.)

19 THE COURT: All right. No one stood.

20 Does any member of the jury panel believe that someone
21 who suffers from pedophilia will never be cured? If so,
22 please stand.

23 (REPORTER'S NOTE: No response.)

24 THE COURT: All right. No one stood.

25 Does any member of the jury panel believe that it is

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 7
VOIR DIRE

1 impossible to rehabilitate persons that were convicted of
2 committing sexual crimes against children? If so, please
3 stand.

4 (REPORTER'S NOTE: No response.)

5 THE COURT: No one stood.

6 Has any member of the jury panel been the subject of or
7 had a close friend or family member that was the subject of a
8 mental inquest warrant or other civil commitment for mental
9 health reasons? If so, please stand.

10 (REPORTER'S NOTE: No response.)

11 THE COURT: No one stood.

12 Has any member of the jury panel ever worked for or in
13 any way been connected with a Social Service agency, a
14 Guardian ad Litem program, a foster care program, or any other
15 entity, either private or governmental, that investigates or
16 counsels victims of rape or sexual assault? If so, please
17 stand.

18 All right. And your name and your number, please, sir?

19 JUROR 65: 65.

20 All right. How does that question apply to you?

21 JUROR 65: My wife is a rape crisis and traumatic
22 counselor.

23 THE COURT: Taking that into account, if you were
24 selected to serve on a jury in this case, could you be fair
25 and impartial to the State and the Defense?

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
VOIR DIRE

8

1 JUROR 65: Yes, sir.

2 THE COURT: Thank you very much.

3 And your name and your number?

4 JUROR 166: Barbara Hardman, 166. I was a volunteer in
5 York County, North Carolina for many years in a rape crisis
6 counseling ministry.

7 THE COURT: Taking that into account, if you were
8 selected to serve on the jury in this case, could you be fair
9 and impartial to the State and the Defense?

10 JUROR 166: I would attempt to.

11 THE COURT: Is that a yes? Is that a yes?

12 JUROR 166: Yes.

13 THE COURT: All right. Thank you.

14 Your name and your number?

15 JUROR 254: Donna McQueen, 254. I served as a Guardian
16 ad Litem on various cases in Family Court here in Horry
17 County.

18 THE COURT: Taking that into account, if you were
19 selected to serve on the jury in this case, could you be fair
20 and impartial to the State and the Defense?

21 JUROR 254: Yes, sir.

22 THE COURT: Is that a yes?

23 JUROR 254: Yes, sir.

24 THE COURT: Thank you very much. I appreciate you
25 standing.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 9
VOIR DIRE

1 Does any member or spouse of a member of the panel work
2 for the Fifteenth Circuit Solicitor's office? If so, please
3 stand.

4 (REPORTER'S NOTE: No response.)

5 THE COURT: No one stood.

6 Does any member of the panel personally know or had a
7 recent communication with a member of the South Carolina
8 Attorney General's office? If so, please stand.

9 (REPORTER'S NOTE: No response.)

10 THE COURT: No one stood.

11 Would the fact that Micah Allen Bilton has been convicted
12 of a sexual offense and has completed his criminal sentence
13 related to that conviction in any way prevent you from being
14 able to be fair and impartial jurors in this trial? If so,
15 please stand.

16 (REPORTER'S NOTE: No response.)

17 THE COURT: No one stood.

18 Has any member of the jury panel or any of your close
19 personal friends or relatives ever been charged with or
20 convicted of a sexual offense? If so, please stand.

21 You may come forward if you'd like?

22 (REPORTER'S NOTE: A bench conference was held off the record
23 in the presence of but out of hearing of the Jury Venire.)

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

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 10
VOIR DIRE

1 or the law? If so, please stand.

2 Your name and number again?

3 JUROR 157: Lawrence Groelinger, 157. I was employed
4 with Horry County in the jail from 2004 to 2014. If Mr.
5 Bilton was in there during that time, I have no particular
6 memory of him. I also have a degree in psychology and 32
7 years of law enforcement experience.

8 THE COURT: Thank you very much. And lady in the back,
9 your name and number again?

10 JUROR 254: Donna McQueen, 254. I'm an attorney. I
11 practice here in Horry.

12 THE COURT: All right. Thank you. And your name and
13 your number again?

14 JUROR 166: Barbara Hardman, 166. I graduated from the
15 University of North Carolina Chapel Hill and majored in
16 psychology, do counseling with pregnancy support services for
17 many years.

18 THE COURT: Good. Thank you.

19 And your name and number?

20 JUROR 421: Lorie Wagner, 421. I did paralegal studies
21 and worked for a few years.

22 THE COURT: All right. Thank you.

23 Has any member of the jury been involved in a prison
24 ministry, prison outreach program or any other program
25 involving contact with incarcerated persons? If so, please

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
VOIR DIRE

11

1 stand

2 THE COURT: Your name and number?

3 JUROR 25: Laura Bast, 25.

4 THE COURT: All right.

5 JUROR 25: I work for Prison Fellowship Ministries in the
6 Angel Tree program which is an outreach to children of parents
7 in prison.

8 THE COURT: Taking that into account, if you were
9 selected to serve on the jury in this case, could you be fair
10 and impartial to the State and the Defense?

11 JUROR 25: Yes, sir.

12 THE COURT: Thank you. I appreciate you standing.

13 And has any member of the jury panel or any of your close
14 personal friends or relatives ever been subject to a civil
15 commitment proceeding or been voluntarily or involuntarily
16 civilly committed? If so, please stand.

17 JUROR 183: Joseph Hope.

18 THE COURT: Your number?

19 JUROR 183: 183.

20 THE COURT: All right. How does that question apply to
21 you?

22 JUROR 183: I actually have a civil case coming up now on
23 myself.

24 THE COURT: All right. Taking that into account, if you
25 were selected to serve on the jury in this case, could you be

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 12
JURY SELECTION

1 fair and impartial to the State and the Defense?

2 JUROR 183: I believe I can.

3 THE COURT: Is that a yes?

4 JUROR 183: Yes.

5 THE COURT: Thank you. I appreciate you standing.

6 Have you or anyone in your immediate family ever been a
7 victim of criminal sexual conduct or sexual abuse, whether
8 reported or unreported? If so, please stand.

9 You may come forward if you would like.

10 All right. You may come forward if you would like.

11 (REPORTER'S NOTE: A bench conference was held off the record
12 in the presence of but out of hearing of the Jury Venire.)

13 THE COURT: All right. Anything further from the State?

14 MR. MORROW: Nothing further from the State, Your Honor.

15 THE COURT: Anything from the Defense?

16 MR. FALK: No, Your Honor.

17 THE COURT: Excepting those I have excused, I find the
18 jury panel qualified for this case. If you'll give us a jury
19 of twelve and one alternate.

20 All right. If y'all will let me know when you're ready.

21 JURY SELECTION:

22 CLERK: Beginning with the State using the numbers on the
23 left, please.

24 MR. MORROW: The State strikes Juror 18.

25 CLERK: State Number 18.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
JURY SELECTION

13

1 MR. FALK: The Respondent strikes Juror 21.
2 CLERK: Numbers 1 through 20.
3 MR. FALK: Sorry. The State strikes Juror Number 7.
4 CLERK: Respondent Number 7.
5 MR. FALK: Respondent 7.
6 MR. MORROW: The State strikes Juror 3.
7 CLERK: State Number 3.
8 MR. FALK: Respondent Number 17.
9 CLERK: Respondent Number 17.
10 MR. MORROW: The State strikes Juror 8.
11 CLERK: State Number 8.
12 MR. FALK: Respondent 12.
13 CLERK: Respondent Number 12.
14 COURT REPORTER: I'm sorry, what number?
15 CLERK: 12.
16 COURT REPORTER: Thank you.
17 MR. MORROW: State strikes Juror 1.
18 CLERK: State Number 1.
19 MR. FALK: Respondent Number 5.
20 CLERK: Respondent Number 5.
21 MR. MORROW: State strikes Juror 23.
22 CLERK: State Number 23.
23 MR. FALK: Respondent Number 21.
24 CLERK: Respondent Number 21.
25 Review the strikes, please. State strikes Numbers 1, 3,

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 14
BY THE COURT

1 8, 18, 23?

2 MR. MORROW: That's correct.

3 CLERK: Respondent strikes numbers 5, 7, 12, 17, and 21?

4 MR. FALK: That's correct.

5 CLERK: When I call your name and juror number, please
6 have a seat over in the jury box.

7 Number 104, Amy Dixon; Number 25, Laura Bast; Number 262,
8 Cathy Milliard; Number 212, Richard Kiernan; Number 349,
9 Robert Sengle; Number 391, Tyrone Tai; Number 374, Daniel
10 Splaine; Number 369, David Snight; Number 429, Clifford
11 Washington; Number 350, Shane Saver; Number 379, Dianne
12 Stevens; Number 157, Lawrence Groelinger; Number 149, Donna
13 Gore.

14 BY THE COURT:

15 THE COURT: Any objections to the jury or the process
16 from which they were drawn? What says the State?

17 MR. MORROW: No objection from the State, Your Honor.

18 THE COURT: Defense?

19 MR. FALK: No objection.

20 THE COURT: All right. The remainder of the jury panel
21 is excused for the week. Have a good weekend.

22 (REPORTER'S NOTE: Remaining Jury Venire exits courtroom.)

23 THE COURT: Mr. Morrow and Mr. Falk, can I speak with you
24 real quick?

25 (REPORTER'S NOTE: A bench conference was held off the record

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 15
MOTIONS

1 in the presence of but out of hearing of the Jury.)

2 THE COURT: All right. Members of the jury, I'm gonna
3 excuse you until 2 o'clock. At this time, we're gonna do some
4 pretrial motions and try to get everything laid out for you so
5 that we can proceed forward in an efficient way this
6 afternoon.

7 But I do want to tell you one thing, you do know a little
8 bit about this case. You know the names involved in the case
9 and I'm gonna order that you not investigate the case. Don't
10 get on the internet and Google anything about this case, look
11 up any names or anything about this type of case. Just go and
12 enjoy your lunch, relax, and come back and we'll start at 2
13 o'clock. All right?

14 Thank you very much and we'll see you at 2.

15 (REPORTER'S NOTE: Jury exits courtroom. The following takes
16 place outside the presence of the Jury.)

17 MOTIONS:

18 THE COURT: All right. I'm ready for any pretrial that
19 you might have at this time.

20 MR. FALK: Yes, sir. I mean I can go first.

21 THE COURT: Sure.

22 MR. FALK: I'm assuming -- Ken, we're okay with the
23 opening argument?

24 MR. MORROW: I have justified opening argument as the
25 same as with the last case.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 16
MOTIONS

1 MR. FALK: Okay.

2 THE COURT: Okay. Good.

3 MR. FALK: That having been said, we would move in limine
4 to strike information about offenses for which no charges were
5 brought. Specifically, in this case, it was an armed robbery
6 charge that he was charged with and the case was dismissed
7 against him, and it would appear that it was dismissed against
8 him based on how I read the information because it looked like
9 it was a bad witness ID. He just happened to be in the area
10 when this armed robbery occurred. And I know that Dr. Swan is
11 gonna talk about any time you have contact with law
12 enforcement, it's relevant. I think in this situation, again,
13 it is much more prejudicial than it would be probative. And
14 appreciating the fact that under 703, or under the *Edel* case,
15 there is sort of wide latitude as to what expert witnesses can
16 testify to, but I do think that still at the end of the day,
17 the Trial Judge has the authority as the gatekeeper, as to
18 keeping out evidence which is more prejudicial than probative.
19 I think under the facts in this case, with his limited
20 criminal record, any discussion of that charge would be highly
21 prejudicial and not probative.

22 THE COURT: All right. What's the State say?

23 MR. MORROW: The State would argue based on the *Edel* case
24 and *Corley* case that -- that it -- that it's relevant to the --
25 -- to the expert's diagnosis and therefore should come into

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
MOTIONS

17

1 evidence..

2 THE COURT: Yeah, I think if the expert relied on it to
3 give her opinion, you know, I think it is relevant and I think
4 it is probative -- more probative than prejudicial, especially
5 taking into account the fact that it was dismissed. You can
6 bring up that it was dismissed and cross examine in that
7 regard, but if she relied on it and I think it is relevant and
8 probative.

9 MR. FALK: Thank you, Your Honor. Your Honor, we have a
10 concern in this case about the PPG test and just to -- and I
11 am assuming and I'm gonna kinda wrap everything up at one
12 time, assuming that the State has not called Dr. Burke and
13 that the PPG test results will come in through Dr. Swan, and
14 it is our contention that the PPG test is a violation of his
15 Fourth Amendment rights of search and seizure. It's an
16 extremely invasive exam. The PPG test can elicit personal
17 information of him which goes way beyond the scope of the
18 charges that he has and we do not believe -- I believe that
19 the testimony will come out as it did the last time, that
20 whether or not that Dr. Swan is not gonna be able to testify
21 to whether or not there was an actual consent signed and
22 whether -- and certainly not whether or not the consent was
23 meaningful and whether or not he was advised that he had a
24 right not to consent to the PPG test. So, I believe at that
25 level, we're asserting that there's a Fourth Amendment search

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 18
MOTIONS

1 and seizure issue.

2 I think it's a Fifth Amendment -- I think it's a Fifth
3 Amendment question because this is an extremely -- again it's
4 compulsory self-testimony. He's being forced to testify
5 against himself. And as I stated on Tuesday, granted there
6 are -- there are times when the Court will allow somebody take
7 personal biological information from a Defendant -- for
8 example, you can get a blood draw, but if the Defendant asks
9 for it, it's gonna be subject to Schmerber hearing, again,
10 where the Judge is gonna -- there's gonna be some type of
11 judicial intervention to determine whether or not it's
12 necessary under these facts. I believe that what is happening
13 here is we're giving too much discretion to a retained private
14 contractor as to determine whether or not they're gonna
15 subject somebody to this extremely invasive test.

16 So, again, I believe there is an issue there. I think
17 that this test certainly, even if you accept the fact that
18 there could be information that could be necessary as far as
19 the examiner being able to get information from the person
20 which is beyond their conscious ability to answer the
21 questions -- I mean, some way to get subliminal or whatever it
22 is, subconscious information.

23 There are at least two more less intrusive ways of doing
24 that. She could have given him a polygraph examination. And,
25 honestly, the test that she gave the other guy yesterday, that

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 19
MOTIONS

1 BSP, the Burke Visual Preference Test, would certainly be less
2 intrusive than having somebody sit for three hours and have
3 electrodes hooked up to their genitalia and stimulated to the
4 point where they're trying to see if he becomes erect.

5 So, I think there's -- if I can just make my last ---

6 THE COURT: Go ahead.

7 MR. FALK: And then, again, I believe that because at the
8 end of the day we have a, a loss of liberty potentially
9 involved that you have a *Crawford* issue as to whether or not
10 this is -- this is clearly the testimony about the PPG test.
11 The report that was generated is clearly testimonial because
12 it was generated for the purpose of this litigation and that
13 it's hearsay. It is generated by a doctor who is not present.
14 And South Carolina, in the case of -- if I could just get my
15 -- and I would call the Court's attention to *State v. McCray*
16 which is 413 S.C. 76, 773 S.E.2d 914. It's a South Carolina
17 Court of Appeals case from 2015 and also a line of cases sort
18 of originating with *Bullcoming*, which is B-U-L-L-C-O-M-I-N-G
19 *v. Mexico*, which is United States Supreme Court case at 131
20 S.C., excuse me, Supreme Court Reporter 2705, a 2011 case.
21 Both of those concern with the admission of expert reports
22 which are coming in through where you have an expert
23 conducting reports and then you have a non-testifying expert
24 who really adds no additional data, no independent survey, no
25 independent analysis of the examination, and it would restrict

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 20
MOTIONS

1 the Respondent's ability to cross examine the person who
2 actually performed the test. I think that the test is highly
3 -- the admission of the test is certainly prejudicial to my
4 client. I think it is a very visceral test and jurors respond
5 very emotionally to the testing, and the fact that I cannot
6 cross examine the person who performed the test, and I did not
7 have access to the raw data that was part of this test, and
8 the doctor who is testifying didn't have access to the raw
9 data, was not present when the testing was given, was not --
10 does not have any access to any quality control procedures
11 that were done during the testing, has never witnessed one of
12 these tests being performed by this doctor. She is certainly
13 just a conduit for testing done by a non-testifying expert.

14 THE COURT: All right. Yes, sir?

15 MR. MORROW: Your Honor, the State would take the
16 position that the -- first of all, the -- there are -- there
17 is case law in the State of South Carolina that specifically
18 allows for PPGs to be used in the -- in the context of this
19 case and, at any rate, there is also case law in looking in
20 the *Matter of Care and Treatment of Manigo*, which is a 2010
21 South Carolina Court of Appeals case that it says the hearsay
22 rule did not preclude a forensic scientist from testifying as
23 to what she learned from another treatment provider if she
24 relied upon that information as part of the basis of her
25 opinion. An expert witness -- it further states an expert

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 21
MOTIONS

1 witness must state an opinion based on facts, not within his
2 or her firsthand knowledge, and an expert may base his opinion
3 on information whether or not admissible, made available
4 before a hearing if that information is of the type that was
5 reasonably relied upon by experts in her field, and I believe
6 all those questions can be answered by Dr. Swan.

7 THE COURT: Yeah, would you like proffer any testimony
8 from Dr. Swan, just go -- motions they are given?

9 MR. FALK: Yeah, and just for the record, I want to make
10 clear when I was talking about *Crawford*, in saying this is
11 hearsay, I'm saying it's a confrontation Sixth Amendment
12 violation and I do -- for the record.

13 THE COURT: All right.

14 MR. FALK: I would like to proffer the same testimony we
15 got the last time. I really don't see any other way to do it.

16 THE COURT: Okay. All right. Why don't you go ahead and
17 bring her in and let's go through that process.

18 MR. FALK: It would be neat if we could just transfer the
19 testimony.

20 THE COURT: Cut -- cut and paste?

21 COURT REPORTER: Mr. Falk, will you pull that microphone
22 over in front of you and use it. You have to have it straight
23 in front of you.

24 MR. MORROW: At this time, Your Honor, the State would
25 call Dr. Amy Swan.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 22
AMY C. SWAN - DIRECT BY MORROW

1 CLERK: Please raise your right hand and place your left
2 hand on the Bible.

3 AMY C. SWAN, HAVING BEEN DULY SWORN

4 TESTIFIES AS FOLLOWS:

5 CLERK: State your name for the Court please, ma'am.

6 DR. SWAN: Amy C. Swan. That's S-W-A'-N.

7 THE COURT: All right.

8 MR. MORROW: Yes, sir.

9 DIRECT EXAMINATION OF AMY C. SWAN BY MR. MORROW:

10 Q: Dr. Swan, what's your occupation?

11 A: I'm a forensic psychologist.

12 Q: And what degrees do you possess?

13 A: I have a bachelor's in nursing, I have a master's in
14 clinical psychology, and I have a doctorate in clinical
15 psychology.

16 Q: Do you have any additional specialized training or
17 experience in the field of forensic psychology or forensic
18 assessment of sex offenders?

19 A: I do. I have 922 hours post-doctorate in the area of sex
20 offenders, and 291 of those hours are specifically in the area
21 of assessing the risks that a sex offender has to commit
22 another sexual crime. 5

23 Q: Dr. Swan, do you have any memberships in any professional
24 organizations?

25 A: I do. I'm a member of the American Psychological

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 23
AMY C. SWAN - DIRECT BY MORROW

1 Association, the Association for the Treatment of Sexual
2 Abusers, the Florida Chapter of the American Association for
3 or the Association for the Treatment of Sexual Abusers, the
4 International Association of Forensic Nurses and the
5 Association of State and Provincial Psychology Board. I also
6 served 10 years on the Board of Psychology for the State of
7 Florida; I was appointed by the Governor. And, after I
8 completed that service, I was appointed Chairman of the
9 Probable Cause Committee and I served on that for five years.

10 Q: Dr. Swan, do you have any experience working directly
11 with sex offenders?

12 A: I do. I worked with sex offenders for 29 years.

13 Q: And does your work allow you to do forensic assessments
14 of individuals?

15 A: Yes, it does.

16 Q: And how long have you worked directly with sex offenders?

17 A: About 29 years.

18 Q: And how many sex offenders have you assessed during that
19 time?

20 A: 875 potential sexually violent predators and over 500
21 other types of sex offender evaluations.

22 Q: Can you briefly talk about your experience in relation to
23 sex offenders?

24 A: Yes, it started in 1989, and I set up a trauma program at
25 a private psychiatric hospital and, as part of that, we

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 24
AMY C. SWAN - DIRECT BY MORROW

1 realized that part of the victims had offended. So, we set up
2 an offender portion of that. Between 1993 and 1995, I worked
3 at Nova Community Mental Health Center with victims and
4 perpetrators of sexual violence. Between 1996 and '97, I
5 worked at Northwest Dade Center and that was with incarcerated
6 adolescent sex offenders. Between 1997 and 1999, I worked in
7 court psychology and, as part of that, I worked with victims
8 and perpetrators -- or I evaluated victims and perpetrators of
9 sexual abuse. In 1999, I worked at the Florida Civil
10 Commitment Center, and after the year 2000, I began a private
11 practice doing different types of forensic evaluations
12 including sex offender evaluations.

13 Q: Dr. Swan, are you licensed as a psychologist?

14 A: I am. I'm licensed in Florida, Missouri and South
15 Carolina.

16 Q: And how many times have you been qualified as an expert
17 in South Carolina?

18 A: About 40 times, I think.

19 MR. MORROW: Okay. At this time, Your Honor, I move that
20 Dr. Swan be recognized as an expert in the field of Forensic
21 Psychology.

22 THE COURT: Any objections?

23 MR. FALK: No objection.

24 THE COURT: All right. Motion is granted.

25 BY MR. MORROW:

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
AMY C. SWAN - DIRECT BY MORROW

25

1 Q: Dr. Swan what is the penile plethysmograph assessment?

2 A: The penile plethysmograph is an instrument that measures
3 blood flow to the penis, and that blood flow to the penis is
4 deemed to measure sexual arousal to different scenarios.

5 Q: And can you explain how it works?

6 A: I can. An individual male, obviously they have one for a
7 female, but it's a different version. A man is placed in a
8 laboratory type setting in a reclining chair and a gauge is
9 attached to his penis and as part of this testing, he views
10 slides of clothed individuals in the age ranges of infant
11 males and females, preschool males and females, grammar school
12 males and females, teen males and females, and adult males and
13 females. For each of these pictures, some of the scenarios
14 are persuasive, such as a seductive encounter, and others are
15 coercive, such as a rape encounter. While the individual is
16 looking at these pictures, there are audio tapes that have
17 voices that go with each scenario that provide information
18 about what may be going on in the slide and the theory is that
19 the sexual deviances is in the individual's head, so when he
20 sees these slides of the different individuals that he might
21 be sexually aroused to, they don't need to be unclothed or in
22 suggestive sexual scenarios because he projects his own
23 arousal on these slides.

24 Q: Dr. Swan, why is it important for experts to use this PPG
25 exam?

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 26
AMY C. SWAN - DIRECT BY MORROW

1 A: The PPG is just one measure to help us assess an
2 individual's sexual interest. Often in cases like this,
3 individuals are not very forthcoming about what they're
4 sexually aroused to because they fear the consequences.

5 Q: And, Dr. Swan, has there been any criticism of the penile
6 plethysmograph experts in your field?

7 A: There has been. The biggest obstacle to the penile
8 plethysmograph is the ability to either fake, which is
9 diminishing the arousal that you have or to dissimilate, which
10 is increasing your arousal to the normal subjects so that your
11 arousal to the deviant subjects will not be as notable.

12 Q: And despite that criticism, why do you continue to use
13 it?

14 A: I continue to use it because it's one piece of
15 information. There are about 20 to 30 percent of people that
16 don't respond to it. So, in some cases, we get a flat line
17 and, when we get a flat line, we don't have any information.
18 We don't know if they're not aroused, if they suppress their
19 arousal or if maybe they watch such deviant pornography that
20 the slides look tame to them. But if we do get arousal, then
21 that gives us important information that we can consider.

22 Q: Dr. Swan, are you familiar with the Diagnostic and
23 Statistical Manual of Mental Disorders, Fifth Edition?

24 A: I am.

25 Q: All right. That for short is called a DSM-5?

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
AMY C. SWAN - DIRECT BY MORROW

27

1 A: Yes.

2 Q: And is it a publication that is recognized as
3 authoritative in your field?

4 A: It is.

5 Q: And what is the DSM-5 essentially?

6 A: The DSM-5 is the Diagnostic and Statistical Manual, the
7 Fifth Version, and that's a compendium of all the disorders
8 that an individual might suffer, mental disorders or
9 behavioral disorders, and what the criteria are for diagnosing
10 them.

11 Q: And again does it mention or -- I'm sorry -- does it
12 mention the PPG?

13 A: It does. In the DSM-5, it talks about psycho-
14 physiological measures to assess arousal and it says that the
15 PPG is the most thoroughly researched and the longest used of
16 these measures, although there may be some variations from
17 site to site.

18 Q: Has the penile plethysmograph been subject to publication
19 and peer review?

20 A: Yes, it has, extensively.

21 Q: And has this method been previously applied to sexually
22 violent predator cases in South Carolina?

23 A: Yes, it has.

24 Q: And what quality control methods are used when using the
25 penile plethysmograph?

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 28
AMY C. SWAN - DIRECT BY MORROW

1 A: There are certain patterns that have been delineated in
2 the PPG by which sort of validity index, so if this particular
3 pattern occurs, they know that either faking or dissimulation
4 is occurring. There are also button presses to prevent
5 individuals from thinking about something else while they're
6 looking at the pictures or to mentally manipulate the images.
7 So, while they're watching the pictures, they have to press
8 the button to show that they're paying attention and that is
9 deemed to keep them attentive. Now, if they miss a certain
10 number of button presses, that would be determined to be an
11 invalid presentation.

12 Q: And, Dr. Swan, is the penile plethysmograph consistent
13 with recognized scientific laws and procedures?

14 A: Yes.

15 Q: And did you use the penile plethysmograph or did you
16 order a penile plethysmograph in, in this case?

17 A: I did.

18 Q: And was it part of the basis of your opinion?

19 A: Yes, it was one piece of my opinion.

20 Q: So, it was not the sole basis of your opinion?

21 A: It was not.

22 Q: And would it be professionally acceptable to make this
23 this the sole basis of your opinion?

24 A: It would not.

25 Q: And can you describe -- can you describe once again your

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 29
AMY C. SWAN - DIRECT BY MORROW

1 method of assessment and how you considered this a part of
2 your opinion.

3 A: Well, I do a comprehensive evaluation and I review
4 records, I interview the individual, I rely on research that
5 I've accumulated over the last 29 years about sex offenders,
6 and then I use what the individual says, and then I consider
7 the PPG in light of that.

8 Q: And, Dr. Swan, this -- so the DSM-5 is the newest version
9 of the Diagnostic and Statistical Manual, correct?

10 A: It is.

11 Q: And it mentions the PPG, but did the prior version, the
12 DSM-4 mention the PPG?

13 A: It did. The DSM-4 came about in 1994. And at that time,
14 the opinion of the writers of the DSM-4 was that it lacked
15 scientific reliability and validity.

16 Q: But obviously it's changed since 1994?

17 A: That's correct.

18 Q: Because it's included in the DSM-5.

19 A: Yes.

20 Q: Thank you. Please answer any question that opposing
21 counsel may have for you or the Court.

22 A: Okay.

23 MR. FALK: One moment, Your Honor.

24 THE COURT: Sure.

25 MR. FALK: If I could just have a second, Your Honor?

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 30
AMY C. SWAN - CROSS BY FALK

1 THE COURT: Uh-huh (affirmative response).

2 MR. FALK: I misplaced something.

3 CROSS EXAMINATION OF AMY C. SWAN BY MR. FALK:

4 Q: Dr. Swan?

5 A: Yes.

6 Q: You made the diagnosis in this case of other specified
7 pedophiliac disorder, sexually attracted to pubescent males
8 and females provisional?

9 A: I did.

10 Q: What role -- what evidence was there other than the PPG
11 to support that?

12 A: There was not, that's why I have it on a provisional
13 basis. He demonstrated arousal to those teenage males and
14 females and non-consenting partners, but he did not have any
15 victims in that manner. He did show arousal to coercive
16 scenarios including child coercive scenarios. So, that fit
17 with the arousal to children, but he's not had a teenage
18 partner that I -- that I'm aware of. Now, he was investigated
19 in 2007 for a criminal sexual conduct. He said that he had
20 sex with his girlfriend. I was not able to find any records
21 on that and I really don't know what happened there, but
22 obviously nothing came of it because he -- there were no
23 records. So, I don't know if that had to do with a teenage
24 girl or what.

25 Q: So, but you testified earlier that it would be unethical,

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 31
AMY C. SWAN - CROSS BY FALK

1 I believe, to base an opinion solely on a PPG?

2 A: Solely, right.

3 Q: Right. Is it fair to say though that this provisional
4 diagnosis you made was based solely on the PPG results?

5 A: Well, it is, but it's provisional.

6 Q: I'm sorry, I'm not sure I understand what provisional
7 means?

8 A: Provisional means that he might have it, but you need
9 more information.

10 Q: Would it be your intention to testify -- would it be your
11 intention to tell the jury about your provisional diagnosis?

12 A: Well, he certainly demonstrated arousal to those things,
13 but I would be clear to say that he has not acted out with a
14 teenager that I'm aware of.

15 Q: Excuse me. My question, I think we can go yes or no ---

16 A: Okay.

17 Q: --- would it be your intention to advise this jury of
18 your provisional diagnosis?

19 A: Yes.

20 Q: Thank you. What type of training and certification do
21 you have on the Limestone machine?

22 A: I don't. My training was on the Monarch.

23 Q: You've never -- you've never viewed the specific data set
24 used by Dr. Burke to perform the PPG; is that correct?

25 A: I have not.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 32
AMY C. SWAN - CROSS BY FALK

1 Q: Okay. And Dr. Burke, that's the Southeastern Assessments
2 who performed the PPG in this case?

3 A: Yes.

4 Q: Okay. You're not aware of any peer review studies on the
5 Burke Real Child Voices Stimulus Set, are you?

6 A: I am not.

7 Q: You would acknowledge that in order for the PPG test
8 results to be reliable, that the stimulus sets used would have
9 to be reliable, would you not?

10 A: That's correct. And Dr. Burke uses the same one every
11 time, so that's an internal reliability. I would not compare
12 that with PPGs from another site, because that might be like
13 comparing apples to oranges.

14 Q: But internal reliability has nothing to do with peer
15 review. So, it's the person who generates -- Dr. Burke
16 generated the Real Child Voices Stimulus Set; is that not
17 correct?

18 A: That's correct, but that has nothing to do with peer
19 review.

20 Q: Okay. But has there ever been a peer review study -- and
21 you said that you're not aware of any peer review studies?

22 A: On any of the stimuli.

23 Q: So, is it your testimony that the only information you
24 have about the reliability of that Real Child Voices Stimulus
25 Set is that he uses the same one over and over?

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 33
AMY C. SWAN - CROSS BY FALK

1 A: That's correct.

2 Q: Okay. And you had talked about quality control
3 procedures; is that correct?

4 A: Yes.

5 Q: You have no access to any of the quality -- any reports
6 of any type of quality control? You had talked about button
7 presses; is that correct?

8 A: That's correct.

9 Q: Did the report that you received from Dr. Burke contain
10 any information about button presses?

11 A: It doesn't, and I have seen him say in reports that he
12 missed half of the button presses and therefore this is not a
13 valid presentation. That was not included in this report.

14 Q: And you said there's also some scans or printouts?

15 A: There are charts.

16 Q: Charts, excuse me.

17 A: Yes, similar to the way -- what you get on a polygraph
18 chart that would show patterns that might indicate deception.

19 Q: You have -- but you were not able to review those charts,
20 were you?

21 A: I was not.

22 Q: You have not witnessed any PPG tests performed by
23 Southeastern Assessments; is that correct?

24 A: I have not.

25 Q: You did not witness -- therefore, you did not witness

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 34
AMY C. SWAN - CROSS BY FALK

1 this PPG test?

2 A: That's correct, I did not.

3 Q: Do you have any first-hand information that Dr. Burke was
4 actually present when the testing was conducted?

5 A: I do not.. He, in the past, I believe he's used a
6 technician, but it's my understanding that he does his own
7 tests now, because I had a telephone conversation with him
8 about another PPG.

9 Q: Did you have a telephone conversation with him about this
10 test?

11 A: I did not.

12 Q: Okay. The only information that you've gotten from Dr.
13 Burke about this test is the report; is that correct?

14 A: That's correct.

15 Q: Okay. The report that was from Southeastern Assessments?

16 A: That is correct.

17 Q: So, if it wasn't on the written report, you don't have
18 any access to it?

19 A: That's correct.

20 Q: Okay. You would acknowledge that this is a highly
21 invasive test; is that not correct?

22 A: It is.

23 Q: Would you acknowledge that a PPG test is much more
24 invasive than a lie detector test would be?

25 A: Yes, it is.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 35
AMY C. SWAN - CROSS BY FALK

1 Q: Would you acknowledge that a PPG test is much more
2 invasive than any type of Abel test?

3 A: That's correct. It's hard to get more invasive than
4 putting a gauge on a man's penis.

5 Q: Because Dr. Burke also has a different test, does he not?

6 A: He does.

7 Q: And that is a Visual Preference test?

8 A: Visual Sexual Preference test.

9 Q: Individual Sexual Preference test is somewhat similar to
10 testing that they call the Abel?

11 A: It's very similar to the Abel.

12 Q: What is the acronym for the Able Test?

13 A: A-A-S-I.

14 Q: Able Assessment of Sexual Interest?

15 A: Able Assessment of Sexual Interest.

16 Q: Okay. And that's where you look at -- you look at an
17 image and you're tracking how long your eyes remain on the
18 image; is that correct?

19 A: That is correct.

20 Q: And that is some way to get some type of subconscious or
21 -- yes, subconscious response; is that correct?

22 A: Yes, absolutely.

23 Q: You can ask somebody a question whether or not they're
24 attracted to a girl in a bathing suit and they could say yes
25 or no, but the, the assumption there is that if your eyes are

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 36
AMY C. SWAN - CROSS BY FALK

1 following it, you are probably attracted?

2 A: That is correct.

3 Q: You can also ask somebody a question whether or not
4 they're attracted -- you could actually show somebody a
5 picture of a girl in a bathing suit and ask them a question on
6 the lie detector and you could get a subconscious response; is
7 that correct?

8 A: That is correct.

9 Q: Now, you had testified in a case in Florida regarding
10 Isaac Washington; is that correct?

11 A: I did.

12 Q: And at that time you -- is it true to say that you had
13 testified that you believed that the PPG test was acceptable
14 or in wide use on a therapeutic basis; is that correct?

15 A: That is correct.

16 Q: And that's because once a baseline is established then
17 for measuring treatment, you can see how responses change once
18 the baseline is established?

19 A: That is correct.

20 Q: And you also testified at that time, that it was not well
21 suited for diagnostic; is that not correct?

22 A: It is, and there are two reasons that I said that. In
23 2004, the computer technology was dramatically different than
24 we have now. And in addition, the way it was used in Florida
25 was that as State Evaluators, we were not permitted to use it,

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
AMY C. SWAN - CROSS BY FALK

37

1 but the Defense Evaluators would -- or the Defense Attorneys
2 would request a PPG, and then if it showed no response at all,
3 they would present it in court and say see, he doesn't have
4 any arousal; he should be released when in fact, a flat-line
5 profile like that doesn't mean that they have no arousal. We
6 don't know what the reason is that they didn't respond. There
7 are many possible scenarios, but that's the way it was used in
8 Florida and that was objectionable to me.

9 Q: You had said that the computers are different?

10 A: They are.

11 Q: What specifically as it would relate to administering the
12 PPG test in 2004 in Florida and Mr. Burke's PPG test; what's
13 the difference in the computer?

14 A: Well, the machines are very different. I did retraining
15 in 2013 and the machine was dramatically different then than
16 what I saw in 1999 when I initially took my training, because
17 computer technology has just exponentially increased.

18 Q: Well, I mean ---

19 A: So, they are a lot more technically savvy.

20 Q: Okay. In what way are they more accurate?

21 A: Well, I am not a computer technician and I'm not that
22 savvy on computers, but if you can just imagine the speed and
23 the ability of your computer to do things in 2004 compared to
24 being able to do them in 2017. It's exponentially increased,
25 and so the reliability and the validity have increased, which

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 38
AMY C. SWAN - CROSS BY FALK

1 is likely why it was the opinion in DSM-5 changed.

2 Q: But you don't have any information on why the opinion in
3 the DSM-5 changed, do you?

4 A: Well, I don't have that opinion; no, I do not.

5 Q: Because the issue -- but you were concerned about the
6 accuracy of the machine, the accuracy of the test; is that
7 correct in 2004?

8 A: I was -- I think I was concerned about the accuracy of
9 the test and the way it was used in Florida.

10 Q: Okay. And again, I'm just trying to find out what you
11 know specifically about the accuracy of the test done in 2004
12 when you did not think that it was suitable for a diagnostic
13 purpose and the accuracy of the machinery today?

14 A: As I said, when I did my retraining, I was surprised at
15 how advanced the machine was, and I can't get give you the
16 specifics on that because I am not very technically savvy, but
17 just it totally surprised me based on what I saw in 1999 and
18 what I saw in 2013 when I retrained.

19 Q: I know -- I have no doubt that machinery can be more
20 sophisticated. Certainly, the laptop that I have is much more
21 sophisticated than the Texas Instrument calculator I had in
22 the Sixth Grade. However, if I multiply 2 X 2 on the
23 calculator, I got the same result as I would on my computer
24 today. Accuracy is different than speed or data storage.

25 A: Well, this is where the computer technology comes in.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 39
AMY C. SWAN - CROSS BY FALK

1 Complex statistical formulas are used at arriving at the data.
2 We get the raw data and then there was this statistical
3 transformation to these scores, to area under the curve. So
4 the statistical process was heard more advanced and I believe
5 more accurate than they were when I first learned about the
6 PPG.

7 Q: You would testified that the research -- that the PPG
8 testing is thoroughly researched; is that correct?

9 A: There is a huge amount of data or research on the PPG
10 beginning in the 1950s.

11 Q: And were the ---

12 COURT REPORTER: Excuse me, Mr. Falk, you're on my
13 microphone.

14 MR. FALK: Excuse me, I'm sorry.

15 BY MR. FALK:

16 Q: And then so in the 1950s when these machines were first
17 used, I guess was Mr. Freund?

18 A: Kurt Freund, yes.

19 Q: They were actually using pornography; is that not
20 correct?

21 A: They did. They used the Farrell stimuli, which was later
22 ruled to be pornography, child pornography, by the Supreme
23 Court and these were images that were taken from actual police
24 cases where they come upon child porn and they were using
25 those images to -- as stimuli for the PPG.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 40
RULING OF THE COURT

1 Q: So a lot of this wealth of data that you said about the
2 research on the PPG test, that certainly is a different test
3 than what Dr. Burke was performing because the stimulus set is
4 different; is that right?

5 A: Oh, absolutely.

6 Q: You -- did you apply any of your own analysis to the
7 results that Dr. Burke provided?

8 A: I did not.

9 Q: Do you know how to calculate a Z-score?

10 A: I do know how to calculate a Z-score if I have my
11 statistical formula in front of me.

12 MR. FALK: Okay. Your Honor, I have no further
13 questions.

14 THE COURT: All right. Any redirect?

15 MR. MORROW: No, Your Honor.

16 RULING OF THE COURT:

17 THE COURT: All right. I think a proper foundation has
18 been laid to admit the PPG Test and ---

19 MR. FALK: Your Honor, if I could -- I do think we did
20 uncover some ground that was different from Mr. Martin in that
21 ---

22 THE COURT: Go ahead.

23 MR. FALK: --- that Dr. Swan is talking about using
24 provisional diagnosis that she herself has said she's not sure
25 about it. She's relied on us 100 percent on the PPG. I think

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 41
RULING OF THE COURT

1 -- I think that was her testimony and she's acknowledged that
2 that is, out of her words, that that is unethical to base a
3 diagnosis solely on a PPG test. And so, I have great concern
4 if this Court is gonna allow Dr. Swan to testify regarding her
5 provisional diagnosis in this case.

6 THE COURT: All right. The State?

7 MR. MORROW: Your Honor, again, Dr. Swan has provided a
8 provisional qualifier on that diagnosis. She stated
9 unequivocally for the record and we'll state that he is not
10 acted on that and she has no information that he has acted on
11 that diagnosis. That is simply a provisional diagnosis based
12 on, in small part, on that testing.

13 THE COURT: I agree.

14 MR. FALK: I can't understand how -- Your Honor, I would
15 contend that with that caveat, if she does have a diagnosis
16 that she can go forward on, it would certainly seem to me that
17 setting up this trial, that he may also have this, is
18 certainly more prejudicial than probative to the facts in this
19 case. And then again ---

20 MR. MORROW: Again, I think, Your Honor, if we can
21 clarify for the record that it is a provisional diagnosis and
22 not a hard diagnosis like a pedophilic disorder diagnosis,
23 that this should come in.

24 THE COURT: I agree. I'm gonna allow it.

25 All right. Any other motions before trial?

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 42
BY THE COURT

1 MR. FALK: No, Your Honor.

2 THE COURT: Anything from the State?

3 MR. MORROW: Nothing from the State, Your Honor.

4 THE COURT: Thank you. You may step down, Dr. Swan.

5 DR. SWAN: Thank you.

6 THE COURT: We'll see you back at 2 o'clock.

7 **(RECESS.)**

8 *******OFF THE RECORD*******

9 **(On the Record.)**

10 (REPORTER'S NOTE: Jury enters courtroom.)

11 BY THE COURT:

12 THE COURT: Good afternoon.

13 JURY: Good afternoon.

14 THE COURT: And, Mr. Splaine, I'm gonna make you the
15 foreman of the jury. If you would, come sit on this front row
16 in that seat that that gentleman is sitting in right there, if
17 he'd switch with you. And I think that the gentleman that
18 just made the switch, I want to let you know that while the
19 trial progresses, you're not allowed to talk with the lawyers.
20 That's why the lawyer couldn't talk with you; not that he was
21 trying to be rude or anything.

22 JUROR: I realize that. I get migraine headaches.

23 THE COURT: That's fine.

24 JUROR: And I was trying to take ---

25 THE COURT: If you have any trouble, you let me know.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
BY THE COURT

43

1 All right. And, Ms. Clerk, if you will swear the jury.

2 CLERK: Please stand and raise your right hands.

3 (REPORTER'S NOTE: Jury is duly sworn.)

4 CLERK: Please be seated.

5 THE COURT: All right. Members of the jury, I want to go
6 over a few things with you before this trial actually starts
7 just to give you a little bit of preliminary knowledge to know
8 what to expect and what your role is and what my role is and
9 how they differ and so forth.

10 In this particular case, the first thing I want to tell
11 you is that the State of South Carolina has the burden of
12 proof. They have to prove their case beyond a reasonable
13 doubt. Furthermore, I want to explain to you that you all are
14 the judge of the facts. I, in turn, am the Judge of the law.
15 You may ask yourselves, Well, how do those roles differ;
16 what's the difference? The difference is, is that you, the
17 jury, determine what the facts of this case are, not me, not
18 my Clerk, not the Court Reporter, nobody in the audience, just
19 you all. Well, you ask yourselves, How do we determine what
20 the facts of the case are? You do it simply by looking at the
21 evidence. Evidence is made up of two things. It's made up of
22 the witnesses that come over here, they take that chair,
23 they're sworn in, and they testify, and it's made up of any
24 documents admitted into the record as evidence. That could be
25 reports, pictures, photographs, what have you.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 44
BY THE COURT

1 In turn, I am the Judge of the law. I am here to give
2 these parties a fair trial, and at the end of this trial, the
3 very end of this trial, I will instruct you on the law
4 applicable to this case in great detail. In fact, I will read
5 it to you. And I want you to understand that you have to
6 accept the law as I give it to you. And then, when I tell you
7 to begin your deliberations, you'll take your findings of
8 fact, you'll take the law as I give it to you, put the two
9 together and make a decision therefrom. A lot of common sense
10 in that process.

11 Furthermore, I want you to know, that at no point in time
12 during this trial, if we take a break or if we have to take up
13 motions outside of your presence or if we don't finish today
14 and you have to go home tonight, at no point in time, do you
15 need to start discussing this case. Do not research the case
16 at all. The reason I tell you that is because it's important
17 that you have everything you need before you start making a
18 decision. It would be premature to start talking about the
19 case after only hearing from the State because the Defense may
20 want to put up something. You need to hear from them as well,
21 and then you need to hear from me regarding the law. So, do
22 not discuss the case until I tell you to and that'll be at the
23 very, very end of this trial.

24 Also, like I said earlier, if anybody has any problems at
25 all, you just wag your finger and let me know and I'll make

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 45
OPENING BY MORROW

1 sure that you're taken care of. Right now, all you got to do
2 is sit back, I want you to relax, and I'll recognize the State
3 for your opening statement.

4 MR. MORROW: Thank you, Your Honor.

5 THE COURT: Thank you.

6 OPENING STATEMENT BY MORROW:

7 MR. MORROW: Good afternoon, ladies and gentlemen. My
8 name is Christopher Morrow and I work for the South Carolina
9 Attorney General's office. I'm originally from Duncan, South
10 Carolina, but now live in Columbia and work with the AG's
11 office there.

12 Now you may be wondering why am I here; why isn't
13 somebody more local handling this case. Well, the simple
14 answer to that question is that when the South Carolina
15 Sexually Violent Predator Act was passed in 1998, they
16 assigned all sexually violent predator cases to the Attorney
17 General's office. So that's why I'm here.

18 This case today has been brought under the South Carolina
19 Sexually Violent Predator Act. We're here today because the
20 State is seeking a civil commitment of Micah Bilton as a
21 sexually violent predator. Now, you may be asking yourself at
22 this point, What is a sexually violent predator? In 1998, the
23 South Carolina Sexually Violent Predator Act was passed and it
24 states that a sexually violent predator is someone who has
25 been convicted of at least one sexually violent offense and

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 46
OPENING BY MORROW

1 suffers from a mental abnormality or personality disorder that
2 makes them likely to reoffend if not confined for treatment in
3 a secure facility. The State contends that Micah Bilton meets
4 the criteria set forth in the South Carolina Sexually Violent
5 Predator Act and should be committed to a secure facility run
6 by the South Carolina Department of Mental Health for
7 treatment.

8 Now to prove its case, the State must prove that Micah
9 Bilton has been convicted of at least one sexually violent
10 offense. I don't think the Respondent is going to dispute
11 that point and you'll hear about his sexual offending history
12 and what happened to his victims. Second, the State must
13 prove to you that Mr. Bilton suffers from a mental abnormality
14 or personality disorder that makes him likely to reoffend if
15 not confined for treatment.

16 And to that point, you'll hear from an expert, Dr. Amy
17 Swan, who is court appointed to do an evaluation of Mr. Bilton
18 in this case. You're gonna hear her opinion. You'll hear her
19 testimony, she's a psychologist whose performed over 875
20 sexually violent predator evaluations. You will hear how Dr.
21 Swan spent a significant amount of time reviewing Mr. Bilton's
22 file looking at his overall history, conducting an actuarial
23 assessment of his risks, ordering some psychological and
24 physiological testing of Mr. Bilton to see what his current
25 arousal was, and interviewing Mr. Bilton. Dr. Swan will tell

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
OPENING BY MORROW

47

1 you that Mr. Bilton suffers from the relevant mental
2 abnormality pedophilic disorder, also, other specified
3 depressive disorder and other specified anxiety disorder.
4 Based on her thorough evaluation, her conclusion is that Micah
5 Bilton is likely to commit another act of sexual violence if
6 he is not committed for treatment. You will also hear from
7 any witnesses that the Defense may decide to provide.

8 So, the question that will be presented to you at the end
9 of this trial is, after looking at the evidence, is -- does
10 Micah Bilton suffer from a mental abnormality or personality
11 disorder that makes him likely to reoffend if not confined for
12 treatment.

13 Now, the burden of proof in this case is on the State and
14 the State welcomes that burden. The Judge will instruct you
15 that this is a civil case and not a criminal case. But under
16 the South Carolina Sexually Violent Predator Act, the State
17 must prove its case beyond a reasonable doubt. Now, keep in
18 mind, that is not beyond every doubt or any doubt or any
19 conceivable doubt, but beyond a reasonable doubt. There are
20 few things in this world we can know with 100 percent
21 certainty. However, proof beyond a reasonable doubt is proof
22 that leaves you firmly convinced.

23 Now, these cases by their very nature, because they are
24 sexually violent predator cases, they're gonna have -- contain
25 some disturbing facts. I'm asking you to do one thing, that's

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 48
OPENING BY FALK

1 listen to the evidence. As you listen to the evidence in this
2 case, the verdict you should render will become clear and
3 Micah Bilton is a sexually violent predator and he should be
4 committed to the sexually violent predator treatment unit so
5 that he can get the help that he needs.

6 Thank you.

7 THE COURT: All right. Respondent is recognized.

8 MR. FALK: May it please the Court?

9 THE COURT: Sure.

10 OPENING STATEMENT BY FALK:

11 MR. FALK: Mr. Morrow, ladies and gentlemen of the jury,
12 I think when we are done hearing the testimony, and that may
13 be sometime tomorrow, maybe this afternoon, but I think you're
14 gonna reach the conclusion that Micah Bilton is not violent
15 and he is not a predator.

16 There was something that you -- the task that you're
17 gonna have is extremely hard because no matter what you say
18 during the voir dire when you were being asked questions at
19 the beginning of this trial when y'all were sitting there a
20 couple of hours ago, it's very hard for anybody to sort of
21 separate the fact that Micah Bilton has committed and pled
22 guilty to crimes against children, sexual crimes against
23 children. And a lot of people, most people are gonna have
24 some very strong opinions about that, and it's gonna be very
25 hard for you to sort of separate those opinions that you may

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
OPENING BY FALK

49

1 have in order to look at the very kind of narrow issue we have
2 right here. And the issue is not whether Micah Bilton has
3 committed crimes in the past, but the issue that we're gonna
4 have to determine is whether or not he suffers from a mental
5 disease or defect that makes it likely that he's gonna commit
6 a crime in the future.

7 But there's a difference between an act which is criminal
8 and sort of criminal for criminal sake and an act that is
9 against the law and is motivated because somebody has some
10 type of mental disease. And maybe the easiest way to think
11 about that and, again I may use overly simplistic analogies
12 here, but if somebody steals a candy bar, steals a chocolate
13 bar from the Kangaroo gas station, that person may just really
14 like chocolate and might've been hungry, might not have had
15 money in his pocket and he might really like chocolate and he
16 said the easiest thing for me to do here is to steal this
17 candy bar. That's a crime. That's criminal conduct. Okay.
18 But there's also that other kind of strange person out there,
19 who because of some mental disease or personality disorder
20 that they have, get a real charge out of stealing stuff and
21 it's the stealing that is getting them excited and not
22 necessarily the chocolate. And that's kind of what we're
23 talking about here is that, you know, some people commit a
24 crime and some people suffer from a mental disease so that
25 they sort of can't help but to commit crimes. But, you need

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 50
OPENING BY FALK

1 to divorce yourself from the fact that my client has committed
2 -- has pled guilty and has done a prison sentence, and you may
3 think that the prison sentence he received is not enough and
4 he should have to suffer more, but that's really not your
5 decision. That's not your call. What your call is is to
6 determine whether or not you believe that he suffers from a
7 mental disease or defect that makes it likely he's gonna
8 commit a crime in the future.

9 Now, I am clearly an advocate for my client. I was hired
10 by the South Carolina Department of Commission for Indigent
11 Defense to represent Mr. Bilton and I represent other
12 individuals in these types of cases. Mr. Morrow is clearly an
13 advocate for the State of South Carolina and the Attorney
14 General's office.

15 Now, there's gonna be a witness that we're gonna hear
16 this afternoon and that's Dr. Amy Swan. And it's gonna be
17 real easy, I'm afraid, for y'all to assume that she's gonna,
18 you know, she's the expert, she knows all the stuff, and I'm
19 just -- you'll sort of abdicate your responsibility here to
20 whatever she says. But, you need to consider not whether or
21 not she is also an advocate in this case and whether she --
22 and whether she has -- whether she has a particular bias.

23 The people who need to be fair and unbiased, I guess
24 that's the tagline, is the twelve of you. Now, and I think
25 it's a hard job because if you sort of want something to be

In the Matter of Micah Allen Bilton - 2015-CP-26-08535

51

OPENING BY FALK

1 true, it doesn't take much evidence for you to sort of grab
2 onto it in order to reaffirm to yourself that you want
3 something to be true and you're not gonna necessarily look at
4 all the evidence, but you're gonna maybe see one or two things
5 and since you really want that fact to be true anyways, it's
6 easy to grab onto that. Again, here's my simplistic analogy,
7 but when I was about five years old, I really wanted to
8 believe in Santa Claus and I did believe in Santa Claus. And
9 at one point, I laid out some cookies and some milk on my
10 stocking, and the next morning, there were teeth marks in the
11 cookie and the glass of milk was half drunk and, trust me,
12 that's -- I probably knew the real truth there, but I all I
13 really needed to know -- that's enough. You know, I really
14 wanted to believe in Santa Claus, and I said well who else
15 would have drank this, you know, eaten this cookie and drank
16 that milk; I really wanted to believe. I want you all to try
17 to back off from that a little bit here because you may really
18 want to believe that my client is a sexually violent predator
19 because you don't like the crimes that he's committed in the
20 past and you need to sort of put the brakes on there and ease
21 off of that and try and listen to all the evidence. And at
22 the end of the day, you need to decide whether or not the
23 State has proven beyond a reasonable doubt that my client's a
24 sexually violent predator.

25 Again, I believe at the end of the day, you'll find that

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 52
OPENING BY FALK

1 my client is not violent and he's not a predator. It will
2 still be your determination whether or not he's a sexually
3 violent predator under the statute. I hope that you'll give
4 some serious consideration to that because your decision,
5 although this case is gonna go very quickly, your decision is
6 gonna have an impact about where my client will be sleeping,
7 what he will be wearing for an indeterminate period of time in
8 the future, because it's gonna determine whether or not he's
9 gonna go to a secure facility wearing a jumpsuit or whether or
10 not he's gonna be with his family. So, this case is gonna go
11 very quickly. I want y'all to sort of put the brakes on and
12 consider the impact of your decision and I trust that at the
13 end, that you'll give it fair consideration and that you'll
14 find that my client is not a sexually violent predator.

15 Thank you.

16 THE COURT: All right. The State will call your first
17 witness.

18 MR. MORROW: Yes, Your Honor, the State would call Dr.
19 Amy Swan.

20 CLERK: Raise your right hand and place your left hand on
21 the Bible.

22 AMY C. SWAN, HAVING BEEN DULY SWORN
23 TESTIFIES AS FOLLOWS:

24 CLERK: Have a seat please, ma'am. State your name for
25 the Court please, ma'am.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
AMY C. SWAN - DIRECT BY MORROW

53

1 DR. SWAN: Okay. Thank you. My name is Amy C. Swan; and
2 that's S-W-A-N.

3 DIRECT EXAMINATION OF AMY C. SWAN BY MR. MORROW:

4 Q: Dr. Swan, what is your occupation?

5 A: I'm a forensic psychologist.

6 Q: And how long have you worked in that capacity?

7 A: I have worked as a forensic psychologist for 19 years.

8 Q: What advance degrees do you possess?

9 A: I have a master's degree in clinical psychology that I
10 earned in 1993, and I have a doctoral degree in clinical
11 psychology that I earned in 1997.

12 Q: And, Dr. Swan, what states are you licensed in?

13 A: I'm licensed in Florida, Missouri and South Carolina.

14 Q: Dr. Swan, what is psychology?

15 A: Psychology is the study of the mind and behavior.

16 Q: And what is forensic psychology?

17 A: And forensic psychology is the application of
18 psychological principals to cases that are involved in the
19 legal system.

20 Q: Dr. Swan, have you had any additional specialized
21 training or experience within the field of forensic psychology
22 beyond your doctorate degree?

23 A: I have. I have had 922 hours in the study of sex
24 offenders beyond by doctoral degree, and 291 of those hours
25 were specifically in the area of assessing the risks that a

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 54
AMY C. SWAN - DIRECT BY MORROW

1 sex offender would commit another sexual crime.

2 Q: Dr. Swan, do you have any memberships in any professional
3 organizations?

4 A: I do. I'm a member of the American Psychological
5 Association, the Association for the Treatment of Sexual
6 Abusers, the Florida Chapter of that organization, the
7 International Association of Forensic Nurses and the
8 Association of State and Provincial Psychology Boards. I
9 served 10 years on the Board of Psychology in Florida, which
10 is the part of the government that regulates the practice of
11 psychology. I was appointed to the governor -- by the
12 governor of Florida to that post. After I completed those 10
13 years, I was appointed to be the chairman of the probable
14 cause committee where I evaluated all the complaints that came
15 in about psychologists, and I did that for approximately five
16 years.

17 Q: Dr. Swan, does your work as a forensic psychologist allow
18 you to conduct forensic evaluations of individuals?

19 A: Yes, it does.

20 Q: And do you have any experience working directly with sex
21 offenders?

22 A: I do. I started out in 1989, and I set up a program for
23 sex offenders in a private psychiatric hospital. We had -- I
24 set up a program for sexual trauma and then we found out that
25 some of our victims had also perpetrated, so, we added a sex

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
AMY C. SWAN - DIRECT BY MORROW

55

1 offender component to that. Between 1993 and 1995, I worked
2 at Nova Community Mental Health Center evaluating and treating
3 victims and perpetrators of sexual abuse. Between 1996 and
4 '97, I worked at Northwest Dade Center where I worked with
5 incarcerated adolescent sex offenders. Between 1997 and 1999,
6 I worked in court psychology where I evaluated victims and
7 perpetrators of sexual abuse. And in 1999, I worked -- I
8 began working at the Florida Civil Commitment Center, and in
9 the year 2000, I went into private practice and I contracted
10 with different agencies to do forensic evaluations, including
11 sexually violent predators.

12 Q: Dr. Swan, approximately how many sex offenders have you
13 evaluated?

14 A: I have evaluated approximately 875 sexually violent
15 predators or potential sexually violent predators under this
16 Act, and I have evaluated over 500 other types of sex
17 offenders.

18 Q: Dr. Swan, what types of evaluations have you -- I'm
19 sorry, excuse me. Can you briefly talk about your experience
20 and background in relation to sexually violent predator cases?

21 A: Yes. I was hired as the first psychologist in Florida to
22 provide treatment to the individuals detained under the
23 Florida Sexually Violent Predator Act, and I did that for a
24 year before I went into private practice.

25 Q: And have you ever been previously recognized and

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 56
AMY C. SWAN - VOIR DIRE BY FALK

1 testified as an expert witness in the field of forensic
2 psychology?

3 A: I have, over a thousand times.

4 Q: Have you ever been qualified as an expert witness in
5 sexually violent predator cases?

6 A: I have, approximately 250 times.

7 MR. MORROW: At this time, Your Honor, the State would
8 move that Dr. Swan be recognized as an expert in the field of
9 Forensic Psychology.

10 THE COURT: Any objections?

11 MR. FALK: Without -- may I just ask one question?

12 THE COURT: You may.

13 VOIR DIRE EXAMINATION OF AMY C. SWAN BY MR. FALK:

14 Q: If I may, Dr. Swan, you had said that you had 291 hours?

15 A: Yes.

16 Q: Just could you clarify, is that clock hours or is that
17 like a three-hour class in college?

18 A: It's clock hours because you get one credit hour for each
19 hour that you do the seminar.

20 Q: Okay. So, it wasn't like having 250 hours of schooling
21 towards a major?

22 A: No.

23 Q: All right. Thank you.

24 THE COURT: All right. Your motion is granted.

25 CONTINUATION OF DIRECT EXAMINATION OF AMY C. SWAN BY MR.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
AMY C. SWAN - DIRECT BY MORROW

57

1 MORROW:

2 Q: Dr. Swan, how long have you been a practicing
3 psychologist?

4 A: I have been practicing for 19 years. I was licensed in
5 1998.

6 Q: In the 19 years that you've been a practicing
7 psychologist, have you ever faced discipline by a licensing
8 board?

9 A: No, I have not.

10 Q: In the 19 years that you've been a practicing
11 psychologist, have you ever faced discipline from an
12 organization that you were a member of?

13 A: One time in 2014, a complaint was filed.

14 Q: And what is the difference between discipline by a
15 licensing board and discipline by a voluntary professional or
16 organization.

17 A: Discipline by a licensing board means that you've broken
18 the law and there could be different kind of charges brought
19 based on that. Discipline by a voluntary organization means
20 that you have violated one of their standards or guidelines.

21 Q: And so in the 19 years that you've been practicing,
22 that's happened one time?

23 A: One time.

24 Q: And it was by a voluntary organization?

25 A: It was.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 58
AMY C. SWAN - DIRECT BY MORROW

1 Q: And why were you disciplined by that organization?

2 A: I used an interview that had no norms and standardization
3 and it was deemed to be outdated because my practices were
4 ethical and I did that. Not only did I do that, but -- or
5 APSA as well call it, moreover the same complaint was filed
6 for the American Psychological Association, but they deemed
7 the complaint to have no merit and so they dismissed it and
8 did not take any action on it.

9 Q: All right, Dr. Swan, let's talk about how did you become
10 involved in this case.

11 A: I was appointed by the Court to interview -- to evaluate
12 Mr. Bilton.

13 Q: And were you paid to conduct your evaluation in this
14 case?

15 A: I was.

16 Q: Who paid you?

17 A: The Department of Mental Health.

18 Q: And would you have been paid any differently if you did
19 not recommend commitment?

20 A: No, I get the same rate whether I recommend commitment or
21 not.

22 Q: So, Dr. Swan, why did the department or -- why did you
23 first come into contact with the Department of Mental Health?

24 A: I first came in contact with them because there was a
25 backlog in evaluations. I believe they were behind about a

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
AMY C. SWAN - DIRECT BY MORROW

59

1 175 evaluations, and the former director of the South Carolina
2 program came to work in Florida and because I was already
3 licensed in South Carolina, she recommended me to come and
4 help take care of that backlog and that's in fact what
5 happened.

6 Q: So, Dr. Swan what type of evaluation did you perform in
7 this case?

8 A: This is a pre-commitment evaluation. That's one in which
9 I have to determine if the individual has a mental abnormality
10 or personality disorder that makes them likely to engage in
11 future acts of sexual violence. And it's important to note
12 here that although crimes against children may not be overtly
13 violence in that, you know, no weapon is used, they may not be
14 tied up, but any sexual act against a child is considered a
15 violent offense.

16 Q: Would you please describe the method by which you conduct
17 pre-commitment evaluations in SVP cases?

18 A: Yes. I receive a referral from the Department of Mental
19 Health, as I did in this case, and I receive all the
20 documentation they have about this individual and that usually
21 includes court records, police reports, it includes victims'
22 statements, it includes Department of Corrections records,
23 anything that is involved in the system. If they were
24 involved with the Department of Juvenile Justice, I get some
25 of those records. So, I get all of the records about the

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 60
AMY C. SWAN - DIRECT BY MORROW

1 individual and about his crimes, and then I schedule an
2 appointment and go to see him. And, then I talk to him about
3 everything that's happened since the day he was born until the
4 day he's sitting in front of me and that would include his
5 family history, his academic history, his occupational
6 history, relationship history, medical history, and sexual
7 history.

8 Q: And, Dr. Swan, as part of your evaluation, you mentioned
9 that you met with and interviewed Mr. Bilton, Micah Bilton?

10 A: I did.

11 Q: And how long did you interview him for?

12 A: I saw him on February 17th, 2016 for two-and-a-half
13 hours.

14 Q: And is he in the courtroom today?

15 A: He is. He's the gentleman in the peach-colored shirt
16 next to Mr. Falk.

17 MR. MORROW: Your Honor, may the record reflect the
18 witness identified Mr. Bilton?

19 THE COURT: Yes.

20 BY MR. MORROW:

21 Q: Dr. Swan, did you explain the purpose of the evaluation
22 to Mr. Bilton?

23 A: I did. I have a notification/consent form that informs
24 the individual what their rights are, and I also explain what
25 the purpose of the evaluation and what could happen as a

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
AMY C. SWAN - DIRECT BY MORROW

61

1 result of it.

2 Q: And did he proceed forward with your interview?

3 A: He did. He agreed to participate in the interview.

4 Q: And Dr. Swan, in addition to meeting with and
5 interviewing Mr. Bilton, what information did you receive to
6 aid you in conducting your evaluation?

7 A: Well, obviously all the records I received, talking to
8 Mr. Bilton and all the knowledge that I've gained over the 29
9 years that I've worked with sex offenders, research studies
10 and that sort of thing.

11 Q: And, Dr. Swan, where did you get the records and things
12 that you relied upon?

13 A: From the Attorney General's office.

14 Q: And is this the type of information that is typically and
15 reasonably relied upon by other experts in your field?

16 A: Yes, it is.

17 Q: And did you consider and rely upon that information that
18 you listed for the jury a moment ago and upon your interview
19 with Mr. Bilton, in rendering your opinion in this matter?

20 A: I did.

21 Q: And can you explain to the jury how an individual's past
22 sexual offense behavior relates to his future sexual offense
23 behavior?

24 A: Yes. The best predictor of future behavior is past
25 behavior. And what we mean by that, if an individual commits

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 62
AMY C. SWAN - DIRECT BY MORROW

1 a sexual crime and they receive some kind of punishment and
2 then they go out and do it again -- the first time they
3 committed the crime, just committing a sexual crime increases
4 your risk for a new one, and if you receive a punishment and
5 then you go out and do it again, then that increases your risk
6 even more and places you at higher risk for another sexual
7 crime.

8 Q: And, Dr. Swan, based on your interview with Micah Bilton
9 and your review of his file, can you tell me if he had been
10 convicted of a sexual violent offense?

11 A: Yes, he can -- yes, he was. He was convicted of assault
12 and battery of a high and aggravated nature, which is not
13 typically a sexually violent offense unless the judge
14 designates it as such, and so, he had a conviction for that.
15 He also had a conviction for criminal solicitation of a minor,
16 which is a sexually violent offense.

17 Q: And, Dr. Swan, why is it important for you to review and
18 consider this type of information when rendering your opinion?

19 A: Well, I initially have to decide if he has a mental
20 abnormality or personality disorder that makes him likely to
21 commit another sexual crime, and so I have to determine if he
22 has the disorder and then I have to determine if that disorder
23 makes him likely to commit another sexual crime and if he
24 meets the statutory criteria in the South Carolina law.

25 Q: Dr. Swan, would you give a brief overview of the timeline

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 63
AMY C. SWAN - DIRECT BY MORROW

1 of Mr. Bilton's offense history?

2 A: Yes. Mr. Bilton was first investigated for a criminal
3 sexual conduct charge in 2007. Nothing came from that. I'm
4 not sure what the disposition of that was because there were
5 no records available for that. He was arrested again on
6 February 6, 2010 for molesting his four-year-old step-sister,
7 and then he was arrested again on 4/19/13 for molesting his
8 six-year-old niece. And it's important to see what happened
9 in between because that first arrest in 2007 should have, you
10 know, informed him what the -- what would happen if you're
11 arrested for a charge such as this. He was arrested for
12 molesting his four-year-old niece and he was sent to a group
13 home and placed on probation until he was 18 years old. So,
14 he received a punishment for that crime, but less than eight
15 months after he got out of that group home and after he had
16 treatment, he was molesting his six-year-old niece. So, he
17 apparently did not learn from the previous arrest
18 investigation and his previous sentence for a sexual crime,
19 because, less than a year later, he was doing it again.

20 Q: Dr. Swan, I'm gonna show you a document. I'd like for
21 you to take a moment and see if you recognize that document --
22 tell me if you recognize it.

23 A: Yes, this is the document that I relied on for the 2010
24 offense. This is the judge's order on that case and this is
25 where it was reduced from a lewd act on a minor to assault and

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 64
AMY C. SWAN - DIRECT BY MORROW

1 battery of a high and aggravated nature.

2 Q: Dr. Swan, on that document, is there anything to indicate
3 its authenticity?

4 A: Yes, there's a court seal on here.

5 Q: Also on that document, can you tell if the judge made a
6 specific finding as to whether this would be considered a
7 sexually violent offense?

8 A: Yes, he did. He said this is a sexually violent offense
9 pursuant to South Carolina Code Section 44-48-30.

10 Q: Thank you, Dr. Swan.

11 At this time, Your Honor, the State would move State's
12 Exhibit 1 into evidence?

13 THE COURT: Any objections?

14 MR. FALK: Without objection.

15 THE COURT: State's Number 1 is into evidence without
16 objection.

17 STATE'S EXHIBIT NUMBER 1

18 ADMITTED INTO EVIDENCE

19 BY MR. MORROW:

20 Q: Dr. Swan, did you review those documents as part of your
21 evaluation?

22 A: I did.

23 Q: And is it -- are those the type of documents that are
24 commonly and reasonably relied upon by other experts in your
25 field?

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
AMY C. SWAN - DIRECT BY MORROW

65

1 A: Yes, they are.

2 Q: Okay. And, Dr. Swan, why is it necessary to review the
3 details of the underlying facts of that offense?

4 A: Well, I first have to decide if the individual has a
5 diagnosis and then if that diagnosis makes him likely to
6 commit future sexual acts.

7 Q: And, Dr. Swan, could you describe the facts and
8 circumstances regarding Mr. Bilton's 2010 conviction for
9 assault and battery of a high and aggravated nature?

10 A: Yes, this involved his four-year-old step-sister, **Minor I**.
11 **Minor I** mother told the police that **Minor I** was in the kitchen
12 eating an orange when she ---

13 MR. FALK: Objection, Your Honor, hearsay.

14 THE COURT: Response?

15 MR. MORROW: Your Honor, this is part of the basis of the
16 expert's opinion. It's not hearsay under Rule 703.

17 THE COURT: Overruled.

18 A: When she spontaneously said that Mr. Bilton came into her
19 room the night before and rubbed his wee-wee on her butt.

20 **Minor I** father was there and he made Mr. Bilton go to his
21 room. Mr. Bilton had been living with his -- living there.

22 And **Minor I** was taken to the Children's Recovery Center for a
23 forensic interview to assess what, if anything, had happened
24 to her, and she again repeated that Mr. Bilton rubbed his wee-
25 wee on her butt, and then she also disclosed that Mr. Bilton

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 66
AMY C. SWAN - DIRECT BY MORROW

1 had performed oral sex including his mouth on her vagina more
2 than one time.

3 BY MR. MORROW:

4 Q: Dr. Swan, how old was Mr. Bilton at the time of this
5 offense?

6 A: Mr. Bilton was -- I believe that he was sixteen at the
7 time of this offense.

8 Q: And how old was his victim?

9 A: His victim was four.

10 Q: And what did Mr. Bilton have to say about these offenses
11 during your interview?

12 A: Mr. Bilton stated, I rubbed my penis in between her legs
13 against her vaginal area. He admitted that he masturbated
14 until he ejaculated, and he said he did it four or five times.
15 He said that he also had oral sex with her and he said that he
16 put spit on her vagina but he did not lick it or suck it. He
17 said that he was sent to the Department of Juvenile Justice
18 and he went to a group home, and he said that he was on
19 probation until he was 18 years old.

20 Q: And, Dr. Swan, what sentence again did Mr. Bilton receive
21 for that conviction?

22 A: Mr. Bilton was adjudicated as a delinquent and he was
23 sent to -- placed on probation until he was 18 and then sent
24 to a group home where he received sex offender treatment.

25 Q: And did he successfully complete that group home

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
AMY C. SWAN - DIRECT BY MORROW

67

1 treatment?

2 A: Well, the group home treatment lasted from May 13th, 2010
3 until July 6th, 2012. Sex offender treatment, good, solid sex
4 offender treatment lasts longer than that, but the day he
5 turned 18, his probation dropped off and there was no way to
6 compel him to receive additional treatment. So, he was
7 discharged from treatment, but that doesn't necessarily mean
8 that he completed and, in fact, you'll hear that he almost
9 immediately went out and committed another sexual crime.

10 Q: Dr. Swan, I'm gonna show you another document. It's -- I
11 want you to take a moment and see if you recognize that
12 document.

13 A: Okay.

14 Q: Please take a moment to review it and see if you
15 recognize it.

16 A: Yes, this is the indictment for criminal solicitation of
17 a minor, and this is the sentence sheet dated March 23rd,
18 2015.

19 Q: And, Dr. Swan, have you seen those documents before?

20 A: Yes, I have. These are the documents that I relied on as
21 part of my decision.

22 Q: And they were a part of the basis of your expert opinion
23 then?

24 A: Yes.

25 Q: And are they the type of documents that are reasonably

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 68
AMY C. SWAN - DIRECT BY MORROW

1 and commonly relied upon by other experts in your field?

2 A: Yes, they are.

3 Q: Is there anything on those documents to indicate their
4 authenticity?

5 A: Yes, the court seal.

6 Q: Thank you.

7 At this time, the State would move State's Exhibit 2 be
8 admitted into evidence.

9 THE COURT: Any objections?

10 MR. FALK: No objection.

11 THE COURT: State's Number 2 is into evidence without
12 objection.

13 STATE'S EXHIBIT NUMBER 2

14 ADMITTED INTO EVIDENCE

15 BY MR. MORROW:

16 Q: And, Dr. Swan, why is it necessary to review the details
17 and underlying facts of that offense?

18 A: Again, to determine if he has a diagnosis and if that
19 diagnosis makes him likely to act in a sexually violent
20 manner.

21 Q: And, Dr. Swan, could you describe the facts and
22 circumstances regarding Mr. Bilton's 2015 conviction for
23 criminal solicitation of a minor?

24 A: Yes. **Minor 2** was six years old and she was his niece. At
25 the time, Mr. Bilton was living with his sister, and she

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 69
AMY C. SWAN - DIRECT BY MORROW

1 indicated that she had permitted him to use her car. However,
2 Mr. Bilton got stopped by the police and because he did not
3 have a valid license, they would not let him drive the car
4 home. So, he called his sister, Lisa, and she and her mother
5 went down to pick up Mr. Bilton and the car. While they were
6 in the -- driving together, her mother told her that the
7 daughter, **Minor 2**, said that Mr. Bilton slept in the bed with
8 her.

9 MR. FALK: Your Honor, I would renew my hearsay
10 objection.

11 THE COURT: Response to that?

12 MR. MORROW: Yeah, under Rule 703, the basis of an expert
13 opinion.

14 THE COURT: Overruled.

15 A: What's the ruling?

16 THE COURT: You may answer.

17 A: Oh, okay. Thank you. So, when Lisa arrived home, she
18 immediately went to **Minor 2** and asked her if Mr. Bilton slept in
19 bed with her, and **Minor 2** said that he did not sleep in the bed
20 with her but, when she was asleep one night, he came into her
21 bedroom, stood between -- stood beside the bed and he put his
22 hands down her pants and rubbed my hole. **Minor 2** mother also
23 said that **Minor 2** also reported that Mr. Bilton put -- made her
24 put her mouth on his wee-wee or to perform oral sex. She said
25 that Mr. Bilton told her not to tell. So, she was taken to

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 70
AMY C. SWAN - DIRECT BY MORROW

1 the Children's Recovery Center and they asked her what she
2 called her private part and she said it was a biscuit. And so
3 they asked her if she put -- if he put his hand on her
4 biscuit, inside her biscuit, beside her biscuit, varying
5 positions to see if she knew what she was talking about
6 because she was a child. And, she said that Mr. Bilton put
7 his hand in the middle of my biscuit and that he put his hand
8 in her pants while she was sleeping, and she said that he
9 touched her underneath her clothes and that he did it a lot of
10 times, more than five. So, she also explained that he did it
11 in the bedroom, in the living room, and on the trampoline, and
12 she said when he picks me up, he puts his hand in my pants and
13 that she has to fight him over that. When asked what happened
14 on the trampoline, she said that he pushes me and does all
15 that stuff and puts his hand in my pants. Minor 2 also said
16 that she saw Mr. Bilton touch her sister, Minor 3, and that he
17 put his hands in her biscuit as well. She said that she was
18 worried and when the examiner asked her what she was worried
19 about, she said because he's so big; it's big. When asked if
20 Mr. Bilton touched her on top of her biscuit or inside her
21 biscuit on the trampoline, she said inside my biscuit.

22 Now, after the forensic interview, she was taken to a
23 medical doctor to determine if there was evidence of sexual
24 assault. And during the medical interview, she reported to
25 the doctor that she had to suck Uncle Micah's hotdog and she

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 71
AMY C. SWAN - DIRECT BY MORROW

1 said that pee came out and it went in her mouth and it tasted
2 horrible. She also reported to the doctor that he, Mr.
3 Bilton, had been rubbing her private parts on the inside and
4 on the outside and that it hurt especially when she had to
5 pee.

6 BY MR. MORROW:

7 Q: Dr. Swan, what, if anything, did Mr. Bilton have to say
8 about his offenses during your interview?

9 A: So, Mr. Bilton said that he touched her inappropriately
10 and he asked her to put his penis in her mouth twice, not five
11 times. He said that he rubbed her vagina but he did not
12 penetrate it, and he said that he placed his penis in her
13 mouth once. He said that he did not remember ejaculating in
14 her mouth but he might have. He said that he did in fact tell
15 her not to tell her parents, and he denied touching her
16 younger sister, [Minor 3] When I asked him why he did this, he
17 said that with [Minor 1] the first victim, I had a bunch of
18 sexual urges and I wanted to do it with anyone other than
19 myself and she was the female who was closest to me.

20 With regard to [Minor 2], he said I just got out of the group
21 home and I was wanting sexual attention because I'd been away
22 for so long. It should be noted that he had been out of the
23 group home about eight months, so he had plenty of time to
24 find an appropriate partner other than a six-year-old niece.

25 Q: What sentence did Mr. Bilton receive for his conviction

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 72
AMY C. SWAN - DIRECT BY MORROW

1 for criminal solicitation of a minor?

2 A: Mr. Bilton received seven years in SCDC suspended to 30
3 months, and I believe that -- and one year of probation after
4 that 30 months.

5 Q: And, Dr. Swan, did you rely solely on his past criminal
6 history in making your ultimate decision?

7 A: No, I did not.

8 Q: What about his criminal history did you find significant
9 to your opinion?

10 A: Well, the thing that was most important was that he was
11 investigated in 2007 for criminal sexual conduct. That
12 should've provided a wakeup call for him, but it didn't seem
13 to. So, he reoffended in 2010. He had treatment, and then he
14 went out less than a year later and did it again.

15 Q: What did Mr. Bilton tell you about his -- tell you about
16 -- did he tell you in his interview were his sexual interests?

17 A: Mr. Bilton said that 100 percent of his current sexual
18 fantasies are about children -- about adults over the age of
19 18, females. He denied any sexual arousal to children of any
20 kind.

21 Q: And is it necessary to look at sex offender treatment an
22 individual has while he is incarcerated?

23 A: It is.

24 Q: And did you look at that history?

25 A: I did. If an individual has had sufficient treatment and

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 73
AMY C. SWAN - DIRECT BY MORROW

1 it's of the intensity that is needed to assist an individual
2 in controlling his sexual urges, then that could decrease his
3 risks and he might not need commitment for treatment. Mr.
4 Bilton did in fact have treatment.

5 Q: And why is -- again, is that something done by other
6 experts in your field?

7 A: It is.

8 Q: Did you rely on such information as part of the basis of
9 your expert opinion?

10 A: I did.

11 Q: And what, if anything, did you find significant about his
12 sex offender treatment at Generations.

13 A: He was in the group home in between, for a little over
14 two years. He did not benefit from it sufficiently after he
15 was released.

16 Q: And what, if anything, did that tell you?

17 A: Well, we know that -- let me just find that. We know
18 that men -- in general, being molested doesn't make you commit
19 sexual crimes, but we do know for a subset of males that are
20 molested by adult men, that they do go on to commit sexual
21 crimes.

22 Q: And, Dr. Swan, did you order any additional physiological
23 testing of Mr. Bilton?

24 A: I did. I ordered a penile plethysmograph or a PPG is the
25 short version, since no one can pronounce it.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 74
AMY C. SWAN - DIRECT BY MORROW

1 MR. FALK: Objection, Your Honor.

2 THE COURT: Overruled.

3 MR. FALK: Same grounds that I raised initially.

4 THE COURT: I understand.

5 BY MR. MORROW:

6 Q: You may answer, Dr. Swan.

7 A: Yes, I ordered a PPG.

8 Q: And what is the penile plethysmograph?

9 A: The penile plethysmograph is a technique that we use to
10 assess sexual arousal in men. And plethys means blood flow.
11 So, this measures the blood flow in a man's penis to determine
12 if they're sexually aroused. And the way it works is that the
13 individual is seated in a reclining chair and the gauge is
14 placed on his penis, and then he is shown pictures
15 representing infant males and females, preschool males and
16 females, grammar school males and females, teenage males and
17 females, and then adult males and females. When these
18 pictures are presented, some of them are in persuasive
19 scenarios, which means a more seductive context, and others
20 are in a coercive context so that they appear like a rape.
21 And in addition to seeing the pictures, they hear voices that
22 are -- that go along with each picture that are saying things
23 that are like sexual innuendo. And the -- the theory behind
24 this test is that the children or the images in the stimuli
25 don't need to be naked or overtly engaging in sexual acts

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
AMY C. SWAN - DIRECT BY MORROW

75

1 because there's none of that on these pictures, but the sex
2 offender already has a script in his head so they will project
3 what they believe about children or whatever object they're
4 aroused to onto those pictures and then we capture that by a
5 charting method that goes along with the technique.

6 Q: And what were the results of Mr. Bilton's PPG testing?

7 A: So, Mr. Bilton's greatest level of arousal was to the
8 adult female consensual, and that's a normal appropriate
9 arousal. However, he also had deviant arousal, and his most
10 significant deviant arousal was to teen female coercive or
11 rape scenario with a female teenager. He showed arousal to
12 infant females although it was not as high as some of his
13 other ratings. He also had sexual arousal to preschool female
14 coercive or rape scenario, preschool male persuasive, grammar
15 school female persuasive, teen female persuasive, and then
16 teen male coercive.

17 Q: And, Dr. Swan, with all those different aspects that you
18 just mentioned, all the different test levels that he
19 experienced arousal to, does the fact that Mr. Bilton
20 demonstrated arousal to both deviant and non-deviant sex
21 concern you?

22 A: Well, there is some -- Mr. -- you'll hear later that Mr.
23 Bilton is aroused to children, and there is some individuals
24 who are aroused to children that are only aroused to children
25 and we call those exclusive pedophiles. There are some

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 76
AMY C. SWAN - DIRECT BY MORROW

1 individuals who are aroused to children that also have arousal
2 to age-appropriate adult partners in consenting situations and
3 so we call those non-exclusive pedophiles.

4 Q: And so again, you found that Mr. Bilton was aroused to
5 adult female persuasive; what does that mean?

6 A: That means that's just a normal adult consensual
7 scenario.

8 Q: And he was aroused to teen female coercive; what does
9 that mean?

10 A: That's a teenage girl in a rape scenario.

11 Q: And he was aroused at teen female persuasive; what does
12 that mean?

13 A: A teenage girl in a more of a seductive context.

14 Q: And you -- and the PPG also found that he was aroused to
15 teen male coercive; what does that mean?

16 A: A teenage boy in a rape scenario.

17 Q: And it also found that he was aroused to preschool female
18 coercive situations; what does that mean?

19 A: That means that he's interested in preschool girls which
20 would be consistent with his four-year-old victim in a rape
21 scenario.

22 Q: And you also found that he was aroused to grammar school
23 female persuasive situations; what does that mean?

24 A: That would be a school age girl in a more of a seductive
25 context.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
AMY C. SWAN - DIRECT BY MORROW

77

1 Q: Dr. Swan, are you familiar with the Diagnostical
2 Statistical Manual of Mental Disorders, Fifth Edition?

3 A: Yes.

4 Q: And is it a learned treatise in your field?

5 A: It is. This is an 800-page book that has all of the
6 diagnoses, mental health diagnoses that anyone can have and
7 the criteria for diagnosing them.

8 Q: And what does the DSM-5 -- we'll call it that. What does
9 it say about the PPG test?

10 A: It says that the PPG is a psychophysiological test which
11 means it involves the brain and the body, and that the PPG is
12 the most studied and most often used method of assessing
13 psychophysiological arousal.

14 Q: Dr. Swan, based on your examination of Mr. Bilton, your
15 review of his records and all the other factors we've been
16 discussing, were you able to diagnose Mr. Bilton with a
17 relevant mental abnormality?

18 A: I was.

19 Q: And what was that diagnosis?

20 A: I determined that he met pedophilic disorder, sexually
21 attracted to females, non-exclusive type, and what that means
22 is sexual interest in girls, and the non-exclusive type, and
23 the sexually -- the non-exclusive type, as I said, means that
24 he's attracted to adults as well as children.

25 Q: Dr. Swan, what are the criteria for someone to be

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 78
AMY C. SWAN - DIRECT BY MORROW

1 diagnosed with pedophilic disorder?

2 A: So, in order to be diagnosed with pedophilic disorder,
3 over a period of six months, the individual must have had
4 recurrent intense sexual arousal to children as manifested by
5 sexual fantasies, sexual urges, or sexual behaviors involving
6 sexual contact with children. And typically, children in this
7 context means under the age of 13 or children who have not
8 developed their secondary sexual characteristics.

9 Q: And, Dr. Swan, how does Mr. Bilton meet the criteria for
10 pedophilic disorder?

11 A: Well, Mr. Bilton sexually assaulted his four-year-old
12 step-sister, he rubbed his penis on her butt and forced her to
13 engage in oral sex. He sexually assaulted his six-year-old
14 niece between 2013 and 2014, and that included fondling,
15 digital penetration of her vagina, forcing her to suck his
16 penis and ejaculating in her mouth. And, he was also observed
17 sexually abusing the sister of the victim.

18 Q: Dr. Swan, what is Mr. Bilton's diagnosis of pedophilic
19 disorder mean as far as his treatment?

20 A: Well, sexual interest in children as measured by the
21 penile plethysmograph is the one factor that carries the
22 highest risk for committing another sexual crime.

23 Q: And thank you, Dr. Swan. Is the diagnosis of pedophilic
24 disorder in the DSM-5?

25 A: Yes, it is.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 79
AMY C. SWAN - DIRECT BY MORROW

1 Q: And is the criteria listed in the DSM-5 that you talked
2 about a minute ago?

3 A: Yes, it is.

4 Q: Is that the criteria that you used?

5 A: Yes, it is.

6 Q: Okay. And did you -- also in your report, you noted a
7 provisional diagnosis; what is a provisional ---

8 MR. FALK: Objection, Your Honor, relevance.

9 THE COURT: What is your question?

10 MR. MORROW: Provisional diagnosis. My question is, What
11 is a provisional diagnosis?

12 THE COURT: And how is that relevant?

13 MR. MORROW: It's relevant because Dr. Swan diagnosed him
14 with a provisional diagnosis in her report.

15 MR. FALK: I guess I'm more leading on to the next
16 question as far as ---

17 THE COURT: You haven't heard the next question yet.

18 MR. FALK: Yes, Your Honor.

19 THE COURT: Why don't you go ahead and finish that and
20 let's see where it goes.

21 BY MR. MORROW:

22 Q: Dr. Swan, what is a provisional diagnosis?

23 A: A provisional diagnosis is a designation that we use to
24 indicate that we have some information that leads us to
25 conclude that an individual has this disorder but we need more

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 80
AMY C. SWAN - DIRECT BY MORROW

1 information. So, it's not -- not as solid a diagnosis as for
2 example the pedophilic disorder that I diagnosed him with.

3 Q: And did you include a provisional diagnosis in your
4 report?

5 MR. FALK: Objection, Your Honor, now the relevance of
6 the provisional diagnosis.

7 THE COURT: Come on up.

8 (REPORTER'S NOTE: A bench conference was held off the record
9 in the presence of but out of hearing of the Jury.)

10 BY MR. MORROW:

11 Q: Dr. Swan, let's move on.

12 A: Okay.

13 Q: We're gonna talk about your other -- you also made a
14 diagnosis of other specified depressive disorder; is that
15 correct?

16 A: I did.

17 Q: And what is other specified depressive disorder?

18 A: Mr. Bilton talked with me about a long history of
19 depression and suicidal thoughts related -- going back to
20 childhood. And so, therefore, I diagnosed him with that.
21 That does not impact his sexual diagnosis; it's just a
22 diagnosis that I noted during the evaluation.

23 Q: And did you also diagnose Mr. Bilton with other specified
24 anxiety disorder?

25 A: I did.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 81
AMY C. SWAN - DIRECT BY MORROW

1 Q: And what does that diagnosis mean?

2 A: That means that he has a persistent pattern of anxiety
3 over a long period of time, again since childhood. And so,
4 that was a relevant diagnosis that was pretty obvious to me in
5 the evaluation and so I gave him that diagnosis. It does not
6 impact his sexual disorder.

7 Q: Dr. Swan, when you do these kinds of evaluations, how do
8 you measure a person's risk to reoffend?

9 A: We measure a person's risk to offend by looking at static
10 factors or factors that don't change and dynamic factors that
11 do change. Now you cannot cure someone from being a
12 pedophile. If they're a pedophile when they're sixteen,
13 they're gonna be a pedophile when they're sixty or seventy.
14 But what we hope to do through treatment is teach them
15 strategies to control those impulses so that they don't go out
16 and molest more children. So, that's the focus of treatment.

17 Q: And, Dr. Swan, what are -- you just described different
18 risk factors. What are static risk factors?

19 A: Okay. The static risk factors are the ones that don't
20 change and Mr. Bilton's most prominent static risk factor is
21 sexual preference for pre-pubescent, that is children who
22 haven't reached their secondary sexual characteristics, and
23 early pubescent males and females. So, that would be males
24 and females who are between the ages of about 12 and 14 and
25 they have early secondary sexual characteristics, but they're

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 82
AMY C. SWAN - DIRECT BY MORROW

1 not fully developed and they don't look like an adult.

2 Q: And, Dr. Swan, how are static risk factors measured?

3 A: Static risk factors are measured by use of an instrument
4 that we call the Static-99R.

5 Q: And what is the Static-99R?

6 A: The Static-99 is a risk assessment instrument that's
7 constructed similar to the actuarial tables that are used in
8 the insurance industry. For example, we know that males under
9 the age of 25 are at more risk to commit -- are at more risk
10 to have an accident. So, the premiums are higher for these
11 individuals. Once they have an accident, their premiums go
12 even higher and, if they have another accident, their premiums
13 are higher. That's the way it is with sexual offenders. Once
14 they've been either investigated or arrested for a sexual
15 crime and they do it again and again, their risk increases
16 each time making them higher risk for another sexual crime.

17 Q: And why is the Static-99R relevant to your evaluation?

18 A: It's relevant because it's -- it incorporates the static
19 factors that I need to assess and then I consider the dynamic
20 factors as well.

21 Q: And, Dr. Swan, is the Static-99R the type of actuarial
22 assessment used by other experts in your field?

23 A: Yes.

24 Q: And was it part of the basis of your expert opinion?

25 A: Yes, it was.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
AMY C. SWAN - DIRECT BY MORROW

83

1 Q: What was Mr. Bilton's score on the Static-99R?

2 A: Mr. Bilton's score was a 3 and that is in the average
3 risk category.

4 Q: And how is the Static-99R scored?

5 A: The Static-99 is scored as far as percentile ranks and
6 relative risks and I'll explain that to you. When compared to
7 other male sex offenders, his risks falls in the 65th
8 percentile. That means that out of every 100 sex offenders,
9 his risk is higher than 57 percent of them. His -- that means
10 that only 25 percent scored higher than him or were more risky
11 than he is. So, he also -- his relative risk was 1.39 and
12 that means that, that when compared to the average sex
13 offender whose score is a two, Mr. Bilton is 1.3 times more
14 likely to commit a sexual crime. It's important to notice
15 that there's a discrepancy between what the actuarials tell us
16 and what the statute in the State of South Carolina asks us to
17 find. The statute asks us to tell whether an individual will
18 commit another sexual crime in this lifetime and the Static-
19 99R tells us his risks to be arrested or convicted for a
20 sexual crime in five years. Since less than 10 percent of
21 sexual crimes results in a conviction, it's a dramatic
22 underestimation of risks using the Static-99 to assess risks.

23 Q: Dr. Swan, you also mentioned dynamic risk factors?

24 A: Yes.

25 Q: What are dynamic risk factors?

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 84
AMY C. SWAN - DIRECT BY MORROW

1 A: Dynamic risk factors are risk factors that are
2 changeable, and these are the things that we work on in
3 treatment so that the individual can learn the strategies so
4 they don't go out and commit other sexual crimes.

5 Q: And why are those -- why are those dynamic risk factors
6 important?

7 A: Well, the static factors don't ever change. So, it
8 doesn't speak to the fact if someone had had sufficient
9 treatment to benefit them, it would be unfair to just use the
10 static because then they'd never be deemed lower risks and,
11 you know, so, there would be no hope for them because it would
12 never change. The dynamic risk factors, we assess the static
13 ones and then we look at the dynamic ones too to see how much
14 an individual has changed or what other areas they have sexual
15 problems in and then we put those two together and come up
16 with an estimate of risks.

17 Q: And are these dynamic risk factors considered by other
18 type -- considered reasonably reliable by other experts in
19 your field?

20 A: Yes, they are.

21 Q: And does Mr. Bilton have any dynamic risk factors?

22 A: He does.

23 Q: And what are those?

24 A: He has sexualized violence which describes an interest in
25 coercive sex over consenting sex, and because I diagnosed --

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 85
AMY C. SWAN - DIRECT BY MORROW

1 assigned that dynamic risk factor because he demonstrated
2 sexual arousal to coercive scenarios on the PPG. He also has
3 multiple paraphilias. Two or more rare, unusual or socially
4 deviant sexual interest in persons, objects, or activities. I
5 diagnosed him -- or I assigned lifestyle impulsiveness.

6 MR. FALK: Objection, Your Honor.

7 THE COURT: What ground?

8 MR. FALK: May we approach?

9 THE COURT: Yes.

10 (REPORTER'S NOTE: A bench conference was held off the record
11 in the presence of but out of hearing of the Jury.)

12 BY MR. MORROW:

13 Q: Dr. Swan, you said you -- you also mentioned -- you
14 mentioned lifestyle impulsiveness?

15 A: I did.

16 Q: And what was -- what does that mean?

17 A: This refers to low self-control, chronic instability in
18 employment and housing, irresponsible decisions or unrealistic
19 long-term goals. And this is a major factor in criminal
20 behavior and Mr. Bilton has demonstrated low self-control,
21 irresponsible decisions, and limited or unrealistic goals. He
22 also demonstrated poor problem solving, and this is -- it
23 involves deficits in problem recognition, lack of
24 consequential thinking and difficulties generating a suitably
25 wide alternative behaviors. And, Mr. Bilton seems to have

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 86
AMY C. SWAN - DIRECT BY MORROW

1 avoided addressing his problem. For example, after at least
2 his first sentence, he should have realized that he had areas
3 of sexual deviance and he should have taken the steps needed
4 so that he didn't reoffend again, and he did not do that. He
5 also appeared not to be able to see cause and effect like, if
6 I do this again, I could go to prison, and he failed to learn
7 from experience.

8 Q: Dr. Swan, you also mentioned I believe, dysfunctional
9 coping; what is that?

10 A: I did. Dysfunctional coping is responding to problems
11 with either externalizing behavior like committing crimes and
12 also through sexual responses.

13 Q: And can you give any examples of Mr. Bilton's
14 dysfunctional coping?

15 A: Yes, I can. He -- let me just find that quickly. With
16 regards to his dysfunctional coping, he reported that he
17 responded to feelings of neglect and abandonment by acting out
18 sexually.

19 Q: And are these dynamic risk factors significant with
20 regard to your opinion?

21 A: Yes, they are.

22 Q: Why are these risk factors significant?

23 A: It gives a comprehensive evaluation of the person. If
24 you only do either the dynamic or the static, you don't get a
25 complete picture of the individual.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
AMY C. SWAN - DIRECT BY MORROW

87

1 Q: Dr. Swan, is your expert opinion that Mr. Bilton suffers
2 from a mental abnormality?

3 A: Yes, it is.

4 Q: And that mental abnormality is pedophilic disorder and
5 other specified depressive disorder and other specified
6 anxiety disorder; is that correct?

7 A: That's correct.

8 Q: And do you have an opinion as to whether Mr. Bilton's
9 pedophilic disorder causes him serious difficulty in
10 controlling his behavior?

11 A: Yes.

12 Q: Do you have an opinion as to -- as to whether Mr. Bilton
13 is likely to commit future acts of sexual violence?

14 A: Yes, I believe he is.

15 Q: And do you have an opinion as to whether Mr. Bilton's
16 pedophilic disorder makes him likely to engage in acts of
17 sexual violence if not confined to a secure facility for long-
18 term control, care, and treatment?

19 A: That's correct; I do.

20 Q: And, Dr. Swan, do you have an opinion as to whether Mr.
21 Bilton meets the criteria to be found a sexually violent
22 predator?

23 A: I do.

24 Q: And are -- and is he a sexually violent predator?

25 A: Yes, he is.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 88
AMY C. SWAN - CROSS BY FALK

1 Q: And are all these opinions based on a reasonable degree
2 of psychological certainty?

3 A: Yes, they are.

4 Q: Thank you. Please answer any questions that Mr. Falk or
5 the Court may have for you.

6 MR. FALK: May it please the Court?

7 THE COURT: Sure.

8 CROSS EXAMINATION OF AMY C. SWAN BY MR. FALK:

9 Q: You just said it was your opinion that he was likely to
10 engage in conduct?

11 A: That's correct.

12 Q: Can you quantify the likeliness of that?

13 A: I can't.

14 Q: You cannot?

15 A: I cannot. There's no numerical number that goes with
16 likely. It's defined in the statute.

17 Q: So, how -- so is it just your opinion that it's likely?
18 Can you give us any support to say that it's likely?

19 A: Well, I used the Static-99, I did my evaluation and I
20 assessed his risks, and I concluded that he was likely to
21 commit another sexual crime.

22 Q: Since you talked about the Static-99, you said that at 3
23 rated his risk as moderate?

24 A: It's average. But, I also added that the Static-99R
25 dramatically underestimates risks.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
AMY C. SWAN - CROSS BY FALK

89

1 Q: On the report that you supplied, when you gave this
2 Static-99 coding sheet ---

3 A: Yes.

4 Q: --- I believe that, let me just get that. It shows a 3
5 -- may I approach?

6 THE COURT: You may.

7 Q: This is the coding sheet that I was given.

8 A: Yes, and in October of 2016, we got new coding rules for
9 the Static-99, so what was previously a moderate low risk is
10 now considered average risk, and average risk -- well, the
11 scores range from -3 to 12 so a 3 is average risk.

12 Q: Again, but I believe that when you talked about using the
13 Static-99, you were talking about his risks in relative terms;
14 is that correct?

15 A: Well, there's a relative risk and there is the percentile
16 risk.

17 Q: I believe that you talked about at least part of your
18 opinion was a relative risk; is that correct?

19 A: That is correct.

20 Q: And you said -- and I believe you said that somebody with
21 this score is 27 percent more likely than somebody else; is
22 that -- what was your ---

23 A: Relative risks refers to his risks as compared to the
24 average sex offender. The average sex offender scores a 2 on
25 the Static-99; he scored a 3, so his risks would be 1.39 times

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 90
AMY C. SWAN - CROSS BY FALK

1 the risk of the average sex offender.

2 Q: But our job today is to determine whether or not Mr.
3 Bilton will commit a crime in the future; is that correct?

4 A: That's correct.

5 Q: And so we're -- and our job today is to determine whether
6 or not it is likely that he will reoffend; is that correct?

7 A: That's correct.

8 Q: So, if you say that somebody is 1.3 times more likely --
9 and that's what your testimony was; is that correct?

10 A: On that particular aspect, yes.

11 Q: Well, I mean, sometimes I think it can be confusing when
12 we talk about percentages and -- for example, if I buy one
13 ticket to win the lottery, you know the Power Ball, my odds
14 may be 1 in 300,000,000, is that -- would you accept that that
15 is possibly true?

16 A: Possibly.

17 Q: Okay. If buy 10 tickets to win the lottery -- well, no,
18 let me back up. If I buy one ticket to win the lottery, let's
19 assume like the odds are one in 300,000,000; is that correct?

20 A: Okay.

21 Q: Okay. Let's assume Mr. Bilton bought 10 tickets?

22 A: That's correct.

23 Q: His odds of winning the lottery are 10 times greater than
24 mine; is that correct? He has 10 tickets; I have one ticket?

25 A: Well, statistically, I don't believe you're right based

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 91
AMY C. SWAN - CROSS BY FALK

1 on the odds, but let's just say for sake of argument that his
2 would be.

3 Q: Ten times more likely?

4 A: Yes.

5 Q: But still neither one of us -- it's not likely that
6 either of us are winning the lottery; is that not correct?

7 A: That's correct.

8 Q: So, you really haven't given us anything to show what the
9 likelihood that that person, the absolute risk that he's going
10 to reoffend; is that correct?

11 A: Well, we discussed the percentile ranking, and in the
12 percentile ranking, only 25 percent of the men in the Static-
13 99 sample had more risks than him. So, that's a significant
14 risk.

15 Q: Relative to another group, but it's still not ---

16 A: Well, relative to all the sex offenders that were
17 evaluated. The Static-99 was initially -- the research was
18 based on 28,000 sex offenders, which is a very large sample.
19 So, if his percentile, if only 25 percent carried more risks
20 than him, then that indicates that he's risky.

21 Q: You had testified that y'all changed the rules in October
22 of 2015?

23 A: Well, the coding rules, that's correct.

24 Q: Okay. Isn't it true, that prior to that, what would you
25 do is -- for example, if somebody got a 3 ---

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 92
AMY C. SWAN - CROSS BY FALK

1 A: That's correct.

2 Q: And then you would compare them perhaps to a routine
3 sample of sex offenders; is that correct?

4 A: That's correct.

5 Q: And under those rules, isn't it true that his likelihood
6 to reoffend was seven percent?

7 A: That was formally true, but now we are advised not to use
8 those risk estimates because they're unstable and that came
9 along with the new research that was -- the new coding rules
10 were based on. So, now we're only to use the percentile
11 ranking and the relative risk.

12 Q: So, had we been here last year, he'd have a seven percent
13 chance of reoffending?

14 A: That is correct.

15 Q: Let me go -- how many times have you given a -- what
16 we're doing today is a pre-commitment. You did a pre-
17 commitment evaluation in this case; is that correct?

18 A: I did.

19 Q: How many times have you done that in South Carolina?

20 A: Twenty-six times.

21 Q: And of those times, how many times have you recommended
22 commitment?

23 A: I believe it was all but five.

24 Q: When -- do you recall testifying on Tuesday of this week?

25 A: That's correct.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 93
AMY C. SWAN - CROSS BY FALK

1 Q: Was it your testimony on Tuesday that it was two times?

2 A: No, it was not.

3 Q: Okay.

4 A: I said I could remember the names of two of them right
5 now, but ---

6 Q: I see; thank you. Have you ever testified on behalf of a
7 respondent in one of these trials in South Carolina?

8 A: Not in South Carolina. In Florida, I routinely testify
9 on behalf of respondents when they've done well in treatment
10 and they are no longer at risk. And there are times when I
11 also testify for the respondent when I do a pre-commitment
12 evaluation and find that he doesn't meet criteria.

13 Q: But the majority of the time your testifying is on behalf
14 of the State; is that correct?

15 A: That's right. My contract is with the State and it says
16 that I cannot work for the defense, and so if I find that he
17 doesn't meet criteria, then I would just back out of the
18 picture and not testify at all.

19 Q: Your practice is -- you do a lot of other stuff as
20 opposed to just doing sex offender commitments; is that
21 correct?

22 A: I do.

23 Q: You do child abuse and neglect evaluations?

24 A: I do.

25 Q: You do child pornography cases?

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 94
AMY C. SWAN - CROSS BY FALK

1 A: I do.

2 Q: Custody evaluations?

3 A: I do.

4 Q: Parental alienation?

5 A: I do.

6 Q: Dependency evaluations?

7 A: Yes.

8 Q: Termination of parental right evaluations?

9 A: I do.

10 Q: Evaluations for trauma related disorders, PTSD?

11 A: I do.

12 Q: Evaluations for Munchausen Syndrome and Munchausen by
13 Proxy Syndrome?

14 A: I do.

15 Q: Then you do sex offender risk evaluations and sexually
16 violent predator evaluations?

17 A: That's correct.

18 Q: So that you're not -- you don't necessarily just focus on
19 this particular area; is that correct?

20 A: No. Approximately, 90 percent of my work is with
21 sexually violent predators or sex offenders and the other 10
22 percent would be the independent evaluations that you
23 described.

24 Q: Can you make a, on a percentage basis of the 90 that
25 you're doing are sexually violent predators, how much of that

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
AMY C. SWAN - CROSS BY FALK

95

1 are you testifying on behalf of the State?

2 A: I may end up -- well, you know ---

3 Q: Excuse me. Let me withdraw that question.

4 A: Okay.

5 Q: Because obviously you can be testifying on behalf of the
6 State if you're testifying that somebody has done treatment
7 and needs to get out, and that's not what I'm talking about.

8 As far as testifying for the State in pre-commitment
9 evaluations, can you make an estimate of that?

10 A: I can't. I only testify in about 25 percent of my pre-
11 commitment cases, and I don't know what portion of that is for
12 the State and what is for the defense.

13 Q: Okay. Fair enough. When Mr. Bilton committed the
14 offense that he pled guilty to; how old was he?

15 A: Sixteen.

16 Q: That was the juvenile offense?

17 A: It was.

18 Q: And then there was another offense after that?

19 A: Yes.

20 Q: How old was he then?

21 A: Let's see, that was 2013 when he began offending, so he
22 would have been 19.

23 Q: Okay. As a psychologist, would you agree that not all
24 19-year-old individuals are mature and developed as 24-year-
25 old individuals?

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 96
AMY C. SWAN - CROSS BY FALK

1 A: That's correct.

2 Q: In fact, I think you testified regarding the actuarial
3 driving tables, right, and you said that somebody got to 25,
4 24 was more likely?

5 A: That's correct.

6 Q: Because there's a recognition that -- well, for example,
7 are you familiar with the Supreme Court case of *Miller v.*
8 *Alabama*?

9 A: I am.

10 Q: Okay. And so you know that there were some factors that
11 the Supreme Court recognized as far as why it's not
12 necessarily fair to treat 19 year olds as -- or juveniles the
13 same as older people; is that correct?

14 A: That's correct.

15 Q: Okay.

16 A: And then in fact, we -- one of the changes in the Static-
17 99R that came about last October is based on the research
18 about teenage brains is that, if an individual commits an
19 offense at 15 or under, we don't really count those as
20 convictions because teenage brains are different. However, at
21 the age of 16, it's a little different story.

22 Q: Well, is there -- is that 16-year cut off the same for
23 every individual?

24 A: Well, it is based on the research that was done, but I'm
25 not saying that every 16-year-old individual is the same level

In the Matter of Micah Allen Bilton - 2015-CP-26-08535
AMY C. SWAN - CROSS BY FALK

97

1 of maturity.

2 Q: I mean, there's an understanding that juveniles lack
3 maturity and undeveloped sense of responsibility leading to
4 recklessness, impulsivity, and heedless risk taking?

5 A: That's correct.

6 Q: The more -- and would you not agree that juveniles are
7 more vulnerable to negative influences from peers and outside
8 peer pressure?

9 A: That's correct.

10 Q: And possibly, and this is what I think I want to focus a
11 little bit on here is that juveniles' character is not as well
12 formed as an adult's character and that their traits are less
13 fixed and their actions less likely to be evidence of
14 irretrievable depravity?

15 A: That's correct.

16 Q: Okay. So, Mr. Bilton was 19 at the time ---

17 A: That's correct.

18 Q: --- of the most recent offense? And were you privy to
19 any information from Department of Corrections regarding his
20 IQ?

21 A: I was and let me see where I found that to be.

22 Q: Or privy to any what are they called, the wide-ranging
23 WRAC test, W-R-A-C Testing?

24 A: That is an achievement test, not ---

25 Q: I don't think the IQ information is in there, but I

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 98
AMY C. SWAN - CROSS BY FALK

1 really want to go to that page that we talked about his
2 achievement scores or achievement tests?

3 A: Do you have a page number that I might ---

4 Q: If I tell you that his reading level was 5.2, and that
5 his math level was 7.8; does that sound familiar?

6 A: That does sound familiar. What that tells us though is
7 that even though he may have a normal IQ, he's got some
8 learning disabilities. He's got some reading comprehension
9 issues and his ability to do mathematics is below what we'd
10 expect for someone his age.

11 Q: As part of your evaluation, did you notice that he may
12 have Attention Deficit Disorder? I mean, did that become
13 apparent to you during your two-and-a-half-hour interview?

14 A: Let me just look and see if I noted that. He's
15 previously been diagnosed with that, and I think he's got a
16 long history of it. I didn't note any of that. He was able
17 to attend and respond to the questions that I asked, but I
18 believe in the past he's had some of that.

19 Q: Okay. Did you feel that he was understanding the
20 questions that you were asking him?

21 A: Yes.

22 Q: I believe you -- we had talked a little bit about the
23 treatment that he got at, what was it called, Horizon's Group
24 Home?

25 A: Generations Group Home.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 99
AMY C. SWAN - CROSS BY FALK

1 Q: Generations Group Home. Did you have an opportunity --
2 do you know who Sylvia Roberts is?

3 A: I do.

4 Q: And do you know what her responsibilities are?

5 A: Yes, she's the sex offender treatment provider for the
6 Department of Corrections.

7 Q: Did you contact Ms. Roberts about the treatment that he
8 received at SCDC?

9 A: I was not able to get records from her. She was -- did
10 not respond to my phone calls, but Mr. Bilton told me that he
11 had 30 months of treatment in SCDC. It's important to note
12 that the treatment that they get in SCDC is not the same
13 intensity that is ---

14 Q: Are you -- what experience do you have with the treatment
15 at SCDC? Have you been to any of the treatment programs?

16 A: I have not, but I've talked with Ms. Roberts extensively.
17 I've read the reports from her program for probably 300
18 individuals.

19 Q: And what is the -- what is the difference in the
20 treatment that he was getting at SCDC?

21 A: Well, the treatment that he was getting at the
22 Generations Group Home ---

23 Q: Excuse me, I had ---

24 A: At SCDC?

25 Q: SCDC.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 100
AMY C. SWAN - CROSS BY FALK

1 A: Okay. Are you asking me between Generations and SCDC or
2 did I misunderstand you?

3 Q: Well, I think you made the point of the fact that he had
4 treatment at Generations?

5 A: Yes.

6 Q: That he committed another offense?

7 A: Right.

8 Q: Then he went away ---

9 A: Right.

10 Q: --- and he had treatment at the sex offender treatment
11 program run by Ms. Roberts?

12 A: Yes.

13 Q: And that's the question that I was asking you.

14 A: Yes.

15 Q: What do you know about the treatment that he received
16 there?

17 A: The treatment that they receive in the South Carolina
18 Department of Corrections is primarily psychoeducational. For
19 example, they don't do what we call coping logs, they don't
20 have the arousal management program because that's necessarily
21 a really invasive thing using the -- the penile plethysmograph
22 that we talked about, they use it in treatment, too. And, Mr.
23 Bilton has multiple areas of sexual deviance, male and female
24 children of all age, teenagers ---

25 MR. FALK: Objection, Your Honor. I don't believe you

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 101
AMY C. SWAN - CROSS BY FALK

1 testified about the teenagers.

2 BY MR. FALK:

3 Q: But let me just go on. He received treatment -- do you
4 have any firsthand knowledge of whether or not there's arousal
5 management that's currently being done at the sex offender
6 treatment program at Broad River?

7 A: It is coming. I don't know if it's established. Correct
8 Care took over the treatment program on December 1st. I have
9 extensive experience with them, and arousal management is one
10 of the key components of their program. So, the Florida
11 director indicated to me that they were setting up exactly the
12 same program in South Carolina that we have in Florida and
13 that's part of the treatment.

14 Q: People have been graduating from the South Carolina
15 Sexually Violent Predator Treatment Program before Correct
16 Care took over; is that correct?

17 A: That is correct.

18 Q: And so they have been graduating from the treatment
19 program without this arousal management; is that correct?

20 A: That's correct, and it's my strongly held belief that
21 they were in -- that they would be inadequately prepared.

22 Q: But other than the fact that they don't routinely hook
23 people up to the PPG as y'all do in Florida, what is different
24 about the treatment that he was getting while he was in the
25 sex offender treatment program under Ms. Roberts and what he

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 102
AMY C. SWAN - CROSS BY FALK

1 would get if he were committed to the Sexually Violent
2 Predator Treatment Program?

3 A: The sex offender treatment under Ms. Roberts comes in
4 like six-month phases and there's phase one, there's phase
5 two. And the difference is that they go to treatment once a
6 week, there's a break between the phases, and then they'll go
7 once a week. The treatment program at the Civil Commitment
8 Center is every single day they have treatment and they have
9 multiple hours of treatment per day.

10 Q: But you have no -- you did no independent investigations
11 in Mr. Rollings' case?

12 A: I did.

13 Q: And in that case, you noted ---

14 A: It's sufficient to attenuate someone who's as sexually
15 deviant as Mr. Bilton. He has, like I said, about 300
16 individuals. I was not able to talk to her specifically about
17 Mr. Bilton.

18 Q: And other than your opinion and what is the basis of your
19 opinion for the type of treatment he's gonna get at -- I mean,
20 you have not witnessed any of the treatment that's been
21 provided in sexually -- at the SVP program, have you, in South
22 Carolina?

23 A: It's the identical program to Florida. The Florida
24 people -- the people who run the program in Florida came up
25 here to set the program up. Our director came here in and

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 103
AMY C. SWAN - CROSS BY FALK

1 trained the staff and set up the program. It's the identical
2 program.

3 Q: Okay. We'll talk a little bit about the PPG test that
4 you relied on in this ---

5 A: Yes.

6 Q: --- in your opinion. Have you had any conversations with
7 -- who performed the testing?

8 A: Dr. Burke.

9 Q: Have you had any contact with Dr. Burke regarding this
10 testing other than the four-page report that was supplied?

11 A: I have not.

12 Q: And would you -- is it fair to say that part of this PPG
13 testing is that the validity of the testing is gonna be based
14 on what type of stimulus sets that are used? You talked
15 earlier about pictures that you thought that they saw.

16 A: Part of it is based on that, yes.

17 Q: Have you seen any of the stimulus sets that are used in
18 Dr. Burke's test?

19 A: I have not.

20 Q: And there's also an audio component of that; is that
21 correct?

22 A: That's correct.

23 Q: Have you heard any of the audio components of the test
24 that Dr. Burke provided?

25 A: I have not.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 104
AMY C. SWAN - CROSS BY FALK

1 Q: Are you aware of any -- the stimulus set is actually
2 something that Dr. Burke developed as a proprietary setting;
3 didn't it used to be called the Burke Real Child Voices Set?

4 A: That's correct.

5 Q: And you're not aware of any sort of peer review studies
6 that have showed the validity of that stimulus set; is that
7 correct?

8 A: Not of that stimulus set, but his other Burke Sexual
9 Fantasy Scales are nationally known and standardized.

10 Q: But you based your -- but you based your opinion on data
11 that was generated from the Burke Real Child Voices Set; is
12 that correct?

13 A: That is correct.

14 Q: And you don't -- and you're not aware of any -- any
15 studies that shows that those are valid; is that correct?

16 A: I am not aware of any studies.

17 Q: You had talked earlier about -- and I'm still not sure I
18 understand this. The fact that you are charged with a crime
19 increases your risk of committing a crime?

20 A: Yes. Even if you are not convicted of a crime, being
21 arrested for a sexual crime, increases your risk for another
22 sexual crime.

23 Q: So, you can explain if those two things are causally
24 related?

25 A: They're not causally related; they're correlated because

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 105
AMY C. SWAN - CROSS BY FALK

1 it's a rare event to be arrested for a sexual crime in error.

2 So, if you're arrested for a sexual crime, that is like strike

3 one; it increases your risk for another sexual crime.

4 Q: But when there -- if there were intervening factors, that
5 would interrupt that correlation; would it not?

6 A: There could, yes, treatment.

7 Q: For example, successful treatment?

8 A: That's correct.

9 Q: Thank you. You had talked some about dynamic risk
10 factors?

11 A: Yes.

12 Q: And what specifically -- were you saying was like my
13 client's impulsivity?

14 A: Lifestyle impulsivity.

15 Q: And what exactly were you describing?

16 A: That is basically unstable housing. He was living with
17 his sister back and forth. Let me just get my ---

18 Q: Before we move on, unstable housing, is that a sign of
19 impulsivity or is that a sign of a financial need?

20 A: Well, it could be both, but any -- the lifestyle
21 impulsiveness incorporates failure to be able to support
22 yourself, failure to have a stable living situation.

23 Q: You had found that he has always been employed; did you
24 not?

25 A: I did.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 106
AMY C. SWAN - CROSS BY FALK

1 Q: Except for when he was incarcerated?

2 A: Yes, but when I discussed it, I didn't say that he was --
3 that he had not been stable employment; I said unstable living
4 situation. Irresponsible decision and instability in housing
5 and unrealistic long-term goals?

6 Q: What were his long-term goals?

7 A: Well, he told me that he -- let me just find that. He
8 said that he doesn't need treatment and that he -- that he
9 doesn't need treatment. And I think that is what I considered
10 unrealistic because sex offenders continue to need treatment
11 for a long period of time, especially when they re-enter the
12 community. It's a factor in keeping them stable and, when
13 they're unstable, they're more likely to reoffend.

14 Q: And again, the only evidence of the impulsivity was he
15 was moving back and forth living with his sister?

16 A: It was an unstable living situation.

17 Q: What is a stable living situation for a 19 or 20-year-old
18 who's just gotten out of prison?

19 A: Well, where you find a place to live, you get a job, and
20 you have a stable situation where you support yourself and ---

21 Q: So, living with his sister, in your opinion, is a sign of
22 an impulsive act?

23 A: Well, moving in with his sister who had a child when he
24 had already committed a sexual crime against a child, that's
25 pretty poor decision making.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 107
AMY C. SWAN - CROSS BY FALK

1 Q: What efforts did you make to interview Breanna, his --
2 what he describes as his wife?

3 A: I did not.

4 Q: And why is that?

5 A: Typically, I don't get any information from family
6 members. They never believe that the individual did anything
7 and so it's not very beneficial.

8 Q: Is it not important to at least seek them out to see what
9 they have to say?

10 A: At times, I do, but I did not in this case.

11 Q: And specifically why did you not in this case?

12 A: I didn't believe that she had much information. Mr.
13 Bilton said that his wife has multiple personality disorder
14 and her mother-in-law has multiple -- or his wife's mother has
15 multiple personality disorder and that she's still living with
16 the man that sexually abused his wife.

17 Q: That's his -- that's his common law wife's mother; is
18 that correct?

19 A: Right.

20 Q: Okay. And did you talk to any of the solicitors or the
21 investigating officers in any of these cases?

22 A: I did not. I had the police reports.

23 Q: Would it not be important to find out why they agreed to
24 the plea deals that they did?

25 A: If I'm able to get that information, I do, but often I'm

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 108
AMY C. SWAN - CROSS BY FALK

1 not able to get it.

2 Q: Did you make an effort to get it in this case?

3 A: I don't recall if I did in this case.

4 Q: Because certainly there are plea agreements that were
5 made here and that he's -- he -- his punishments that he got
6 possibly could not be severe as they could've been; is that
7 fair to say?

8 A: That is correct and that was puzzling to me since he
9 forced a six-year-old to have oral sex and ejaculated in her
10 mouth and that he sexually abused a four-year-old as well. So
11 ---

12 Q: Well, could it be that maybe the solicitor did not
13 necessarily believe the accounts from the victims in this
14 case?

15 A: Well, it could be, but it also could be that four-year-
16 olds aren't very good witnesses and that they offered a plea
17 deal rather than trying to put a four-year-old child on the
18 witness stand.

19 Q: Let me go back to 2007. You said there was an
20 investigation?

21 A: Yes.

22 Q: You had no information at all about that investigation;
23 is that correct?

24 A: I do not.

25 Q: You do not even have any information as to whether or not

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 109
AMY C. SWAN - CROSS BY FALK

1 he was alerted of the investigation; is that correct?

2 A: Well, Mr. Bilton said that he had sex with his
3 girlfriend, but nothing ever came of it.

4 Q: And is that your understanding of what the 2007
5 allegations were about?

6 A: I don't have any information about it, so I don't know
7 what happened.

8 Q: Again, but I believe as part of your opinion, you were
9 sort of eluding to the fact that -- I think your words were
10 once he was investigated for something in 2007 that should've
11 been a wakeup call?

12 A: Well, he was investigated for criminal sexual conduct.
13 So even ---

14 Q: Do you have any information that he was notified of the
15 investigation?

16 A: Well, there was an official record of it.

17 Q: I thought you said there was no documents from it?

18 A: There was no documents, but it was noted in the documents
19 that I did have that the police who were investigating him for
20 these crimes against children came across a 2007 criminal
21 sexual conduct report.

22 Q: But there -- but there's no evidence of the police
23 contacting him, that the police arrested him, or that the
24 police detained him; is that correct?

25 A: I don't have any of that information.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 110
AMY C. SWAN - CROSS BY FALK

1 Q: So again, you have no firsthand information of whether or
2 not he was ever alerted to that?

3 A: I don't, but when I asked him, he said he was having sex
4 with his girlfriend, and he would've been 13 at that time.

5 Q: And how old was his girlfriend?

6 A: I don't know.

7 MR. FALK: One moment, Your Honor?

8 THE COURT: Sure.

9 BY MR. FALK:

10 Q: The treatment notes that you said you referred to 300
11 times from the sex offender treatment program?

12 A: Right.

13 Q: Aren't those usually weekly summaries?

14 A: They're typically weekly summaries. Although, I often
15 get pages and pages of the treatment notes themselves.

16 Q: But there's no -- I mean you testified that they met only
17 once a week. You have no firsthand knowledge about how many
18 times a week they met?

19 A: Well, they meet once a week. That's the way the program
20 works.

21 Q: I'm just curious while you called it a weekly summary as
22 opposed to notes from a particular day?

23 A: They only meet once a week.

24 MR. FALK: Your Honor, I have no further questions.

25 THE COURT: Redirect?

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 111
AMY C. SWAN - REDIRECT BY MORROW

1 MR. MORROW: Briefly, Your Honor.

2 REDIRECT EXAMINATION OF AMY C. SWAN BY MR. MORROW:

3 Q: Dr. Swan, the basis of your opinion or your conclusion
4 today includes multiple factors, correct?

5 A: That is correct.

6 Q: And you looked at offense history?

7 A: I did.

8 Q: And you found that he was convicted in juvenile court in
9 2010?

10 A: That's correct.

11 Q: And that he got treatment?

12 A: Yes, he did.

13 Q: And he offended again in 2015 despite facing his
14 consequences in that behavior?

15 A: He was convicted in 2015, but he began offending in 2013.

16 Q: And you also looked at his static risk factors, correct?

17 A: I did.

18 Q: And those are factors that don't change?

19 A: That's correct.

20 Q: And you used the instrument called the Static-99R?

21 A: I did.

22 Q: And that Static-99R only looks at his relative risks for
23 the next five years, correct?

24 A: That's correct.

25 Q: What we're concerned about in this matter is whether he's

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 112
AMY C. SWAN - REDIRECT BY MORROW

1 likely to reoffend ever, correct?

2 A: That's correct.

3 Q: Okay. So, to supplement the weaknesses of the Static-
4 99R, you also look at his dynamic risk factors?

5 A: That is correct.

6 Q: And you found that he had offense supportive attitudes?

7 A: That's correct.

8 Q: And lifestyle impulsiveness?

9 A: I did.

10 Q: And poor problem solving?

11 A: Right.

12 Q: And dysfunctional coping?

13 A: Yes.

14 Q: And all these factor into his risk to reoffend?

15 A: That's correct as well as the PPG which documented his
16 arousal to children from infants to teens.

17 Q: So, you also looked at the results of his PPG test in
18 coming to your opinion?

19 A: I did.

20 Q: And your opinion was based on all of that information?

21 A: That is correct.

22 Q: And you found that Mr. Bilton was likely to reoffend if
23 not confined for treatment?

24 A: I did.

25 Q: Okay. Let's talk about the PPG test you used. Why did

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 113
AMY C. SWAN - REDIRECT BY MORROW

1 you use Dr. Burke?

2 A: Dr. Burke has some nationally recognized sexual offender
3 evaluation tools. He has the Burke Sexual Fantasy
4 Questionnaire, and he's well known in South Carolina for his
5 work with the PPG. It's important when you're doing -- having
6 a PPG done is that you get someone that does it like every
7 single day because if you only do it once a year or once every
8 couple of months, your skills will not be as sharp and Dr.
9 Burke's practice is almost exclusively PPG.

10 Q: And is it common for experts to use assessments performed
11 by other doctors?

12 A: Yes, it is.

13 Q: And would that be similar to when a doctor orders an x-
14 ray which is performed by an x-ray technician rather than the
15 doctor?

16 A: That is correct.

17 Q: And we also talked about his 2007, you saw that in a
18 police report regarding his 2010 and 2015 offenses?

19 A: Yes.

20 Q: Okay. And is it your job to re-litigate his convictions?

21 A: No. If he's been convicted, I assume the behavior
22 occurred.

23 Q: And so and convictions are official court records?

24 A: Yes, they are.

25 Q: Okay. And they were part of the basis of your opinion?

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 114
AMY C. SWAN - RECROSS BY FALK

1 A: Yes.

2 Q: And you don't know what went into the plea deal as far as
3 the -- what -- why he was given a lesser sentence, do you?

4 A: I do not.

5 Q: But it could be that they wanted to spare a child trauma

6 ---

7 A: That's correct.

8 Q: --- to testify on the stand?

9 A: That's correct.

10 Q: In addition to some other reasons as well?

11 A: That's correct..

12 Q: Thank you. No further questions, Your Honor.

13 THE COURT: Anything further from you, Mr. Falk?

14 RECROSS EXAMINATION OF AMY C. SWAN BY MR. FALK:

15 Q: Dr. Swan, do you know what kind of doctor Dr. Burke is?

16 A: He's a psychologist.

17 Q: He's not a forensic psychologist, is he; he has no
18 training in forensic psychology?

19 A: Of course he's a forensic psychologist; he does testing
20 and evaluations.

21 Q: Do you know what his PHD is in?

22 A: Psychology.

23 Q: No further questions.

24 THE COURT: All right. You may step down.

25 Any other witnesses from the State?

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 115
MOTIONS

1 MR. MORROW: None from the State, Your Honor.

2 THE COURT: All right. Members of the jury, there's a
3 natural breaking point at this point in the trial. I'm gonna
4 excuse you for the evening. If you'll be back at 9:30 in the
5 morning, we'll finish it tomorrow morning. Do not research
6 the case, do not discuss the case until it's over.

7 Thank you and you may go.

8 Everybody else remain seated.

9 (REPORTER'S NOTE: Jury exits courtroom. The following takes
10 place outside the presence of the Jury.)

11 MOTIONS:

12 THE COURT: All right. Any motions?

13 MR. FALK: Yes, Your Honor. We would move for a
14 dismissal because I don't think there's -- I think there's
15 insufficient evidence on the likelihood to reoffend. The only
16 information that we've got was in relative terms, but -- and
17 she did say as of October last year, his likelihood to
18 reoffend was 7.9 percent, and I think -- granted I know that
19 at this point we're supposed to look at the level of the
20 evidence, but at some point -- it's a matter of law, a 7.9
21 percent chance of anything is not a likelihood, and we're
22 looking at whether he's likely to reoffend.

23 THE COURT: I think there's a question of facts for the
24 jury and I'm gonna deny the motion.

25 Anything from the State?

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 116
BREANNA COOKE - DIRECT BY FALK

1 MR. MORROW: Nothing from the State, Your Honor.

2 THE COURT: All right. We'll see you at 9:30 in the
3 morning. We'll wrap it up.

4 Thank you and you all have done a good job.

5 END OF DAY ONE.

6 (RECESS.)

7 *****OFF THE RECORD*****

8 JUNE 16, 2017 - DAY TWO.

9 (On the Record.)

10 THE COURT: Everybody ready?

11 MR. FALK: We are, Your Honor.

12 THE COURT: Go ahead and bring in the jury.

13 (REPORTER'S NOTE: Jury enters courtroom.)

14 THE COURT: Good morning.

15 JURY: Good morning.

16 THE COURT: You can go ahead and call your first witness.

17 MR. FALK: Respondent would call Breanna Cooke to the
18 stand.

19 CLERK: Please raise your right hand and place your left
20 hand on the Bible.

21 BREANNA COOKE, HAVING BEEN DULY SWORN

22 TESTIFIES AS FOLLOWS:

23 CLERK: Have a seat. State your name for the Court and
24 spell your first and last name.

25 MS. COOKE: Breanna Cooke, B-R-E-A-N-N-A, C-O-O-K-E.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 117
BREANNA COOKE - DIRECT BY FALK

1 DIRECT EXAMINATION OF BREANNA COOKE BY MR. FALK:

2 Q: Ms. Cooke, are you a little nervous today?

3 A: Yes.

4 Q: I promise I won't bite. How do you know Micah Bilton?

5 A: I grew up with him.

6 Q: When you say grew up with him, for how long?

7 A: Since middle school.

8 Q: Middle school. And do y'all have any children together?

9 A: We have two; a boy and a girl.

10 Q: And what is the little boy's name?

11 A: Son

12 Q: Son Are you able to hear her?

13 COURT REPORTER: Sandra, is the P.A. on?

14 CLERK: Yes.

15 BY MR. FALK:

16 Q: You might have to pull that thing right here.

17 You said your boy's name is Son

18 A: Yes.

19 Q: And how old is he?

20 A: One.

21 Q: And your little girl's name?

22 A: Daughter

23 Q: Daughter how old is she?

24 A: Three.

25 Q: Do you have any other children?

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 118
BREANNA COOKE - DIRECT BY FALK

1 A: Huh-uh (negative response).

2 Q: And were you living together with Micah for a period of
3 time?

4 A: Yes.

5 Q: About how long was that?

6 A: Three or four years.

7 Q: Okay. And he's been away in prison recently; is that
8 correct?

9 A: Yes.

10 Q: Have you been in contact with him?

11 A: Yes.

12 Q: How often do you speak with him?

13 A: Almost every day.

14 Q: And do you know all the things that he's been charged
15 with and has pled guilty to?

16 A: Yes.

17 Q: And you're aware that those are charges where he admitted
18 to fondling ---

19 A: Yes.

20 Q: --- children about the age of your children? You're also
21 aware that he's received treatment while he's in -- while he
22 was at Broad River?

23 A: Yes.

24 Q: Why are you here today? I guess my question is, Do you
25 still support Micah emotionally?

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 119
BREANNA COOKE - CROSS BY MORROW

1 A: Emotionally, yeah.

2 Q: Yeah, I mean, I'm not saying financially, but I mean --
3 would you be concerned if he were let out? Would y'all plan
4 to be living together? Would you plan to have him around your
5 children if he were -- if he were released today?

6 A: I, I don't know.

7 Q: Have you ever witnessed any kind of concerns -- did you
8 ever witness him ever doing anything bad towards your
9 children?

10 A: No.

11 Q: This has been stressful for you?

12 A: Yeah.

13 Q: Has he talked to you about the kind of treatment that
14 he's gotten?

15 A: Kinda.

16 Q: Are you concerned that if he were released today, he
17 would ever do anything to your children?

18 A: No, I'm not.

19 Q: And you would want him around your children?

20 A: Yeah, I would. I don't think he would do anything to
21 them.

22 Q: I have no further questions.

23 THE COURT: All right. Cross examination.

24 MR. MORROW: Briefly, Your Honor.

25 CROSS EXAMINATION OF BREANNA COOKE BY MR. MORROW:

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 120
BREANNA COOKE - CROSS BY MORROW

1 Q: Ms. Cooke, you said you were living together for three to
2 four years; what years were they?

3 A: 2000 -- I'm not sure. 2013 to '15, maybe.

4 Q: Okay. And he was charged in 2013 with criminal
5 solicitation with a minor while y'all were living together
6 then?

7 A: (Indicates affirmatively.)

8 Q: Okay. And the victim in that case was his niece and she
9 was six at the time?

10 A: (Indicates affirmatively.)

11 Q: Is that a yes?

12 A: Yes.

13 Q: Thank you, Your Honor. No further questions for this
14 witness.

15 THE COURT: All right.

16 Any redirect?

17 MR. FALK: No redirect.

18 THE COURT: All right. You may step down. Thank you.
19 If you'll call your next witness.

20 MR. FALK: I'd call John Cooke to the stand.

21 CLERK: Please raise your right hand and place your left
22 hand on the Bible.

23 JOHN COOKE, HAVING BEEN DULY SWORN

24 TESTIFIES AS FOLLOWS:

25 CLERK: State your name for the Court, please, sir.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 121
JOHN COOKE - DIRECT BY FALK

1 MR. COOKE: John Cooke.

2 DIRECT EXAMINATION OF JOHN COOKE BY MR. FALK:

3 Q: Mr. Cooke, what do you do for a living?

4 A: I'm self-employed.

5 Q: As?

6 A: I have a commercial janitorial service.

7 Q: And if Micah were to be released today, would he have --
8 would you have an opportunity -- would you have a job for him?

9 A: Yes, he's worked for me in the past. He's really good;
10 so, yeah.

11 Q: He's worked for you in the past? For about how long had
12 he worked for you in the past?

13 A: At least two years.

14 Q: Okay. And he is -- so he is the father of your two
15 grandchildren?

16 A: That's correct.

17 Q: Do you have other grandchildren?

18 A: Step-grandchildren.

19 Q: Okay. But he is the father of your daughter's two
20 children?

21 A: Yes.

22 Q: Now, do you have any concerns if he were around your
23 grandchildren?

24 A: Not at all.

25 Q: Now, you know what he's been charged with; is that

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 122
JOHN COOKE - CROSS BY MORROW

1 correct?

2 A: Yes, I do.

3 Q: And you know that he's been charged with offenses against
4 children?

5 A: Yes.

6 Q: But you would not have any concerns around your
7 grandchildren?

8 A: No.

9 Q: And, and if he were to be released today, he would have
10 someplace to work because you would have a job for him; is
11 that correct?

12 A: Correct.

13 Q: And that's really all I have. Thank you. Answer any
14 questions Mr. Morrow has.

15 CROSS EXAMINATION OF JOHN COOKE BY MR. MORROW:

16 Q: Mr. Cooke?

17 A: Yes, sir.

18 Q: You would be aware that Mr. Bilton pled guilty to assault
19 and battery of a high and aggravated nature in 2010?

20 A: No, I weren't aware of that.

21 Q: You weren't aware of that. Were you aware that in 2000
22 -- after that plea in 2010, he went to a group home and
23 received treatment for sex offender treatment?

24 A: Yes.

25 Q: You were aware of that?

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 123
JOHN COOKE - REDIRECT BY FALK

1 A: Is that the same charge that he's -- with his niece, is
2 that what you're talking about?

3 Q: This would be his first charge from 2010, and the victim
4 in that case was his -- was his step-sister?

5 A: No, I weren't aware of that.

6 Q: Okay. You're aware of the 2015 offense, correct?

7 A: Yes.

8 Q: And you're aware that he's been to prison for that
9 offense?

10 A: Correct.

11 Q: Thank you. No further questions for this witness.

12 THE COURT: Any redirect?

13 MR. FALK: Redirect, yes, sir.

14 REDIRECT EXAMINATION OF JOHN COOKE BY MR. FALK:

15 Q: So, he's had two run-ins in the past, in 2010 and then
16 the most recent charges?

17 A: Right.

18 Q: And those all concerned children?

19 A: Yes.

20 Q: And I'm not sure if you were aware that that was assault
21 and battery or whatever that charge was, but do you have any
22 -- knowing now or whatever, do you have any concerns? Is your
23 testimony different, do you have any concerns with him being
24 around your grandchildren?

25 A: No, I don't. From what I know of Micah, I've been around

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 124
MICAH ALLEN BILTON - DIRECT BY FALK

1 him all these years. I have no concerns.

2 Q: Okay. No further questions.

3 THE COURT: All right. You may step down. Thank you.

4 A: Thank you.

5 THE COURT: You may call your next witness.

6 MR. FALK: At this time, we would like to call Micah
7 Bilton to the stand.

8 THE COURT: All right.

9 CLERK: Please raise your right hand and place your left
10 hand on the Bible.

11 MICAH ALLEN BILTON, HAVING BEEN DULY
12 SWORN TESTIFIES AS FOLLOWS:

13 CLERK: Have a seat please, sir. State your name for the
14 Court, please, sir.

15 MR. BILTON: Micah Bilton.

16 DIRECT EXAMINATION OF MICAH BILTON BY MR. FALK:

17 Q: Hello, Micah. Let's talk a little bit about your
18 history. Dr. Swan talked a little bit about it. But, at some
19 time, were you in a group home when you were younger?

20 A: Yes, sir.

21 Q: About when was that; about how old were you?

22 A: Fifteen when I entered; 17 when I left.

23 Q: Okay. And that was the Generations home?

24 A: Yes, sir.

25 Q: Did y'all have -- how did you get placed in that home;

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 125
MICAH ALLEN BILTON - DIRECT BY FALK

1 that was because of the charges?

2 A: Yes, sir.

3 Q: Okay. And you had some kind of counseling there?

4 A: Yes, sir.

5 Q: What was that counseling about?

6 A: Empathy of victims, kinda putting myself in their
7 situation, and how to understand how I did, and what triggered
8 my offenses.

9 Q: And so you had this counseling; how many -- do you recall
10 how many days a week were y'all meeting?

11 A: We had meetings every day with a counselor.

12 Q: Okay. And did y'all have like homework? Did you have to
13 work on stuff and then make presentations to the group?

14 A: Yes, sir.

15 Q: Okay. And about over what period of time did this
16 counseling occur?

17 A: The whole time I was at the group home.

18 Q: So, really the whole time you were at the group home, you
19 were getting counseling?

20 A: Yes.

21 Q: Okay. And again, what kind of stuff did -- what did you
22 learn -- was it help -- did you find any of it helpful?

23 A: Yes, sir.

24 Q: And what did you find that was helpful about it?

25 A: I learned triggers, high risk factors, empathy, basically

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 126
MICAH ALLEN BILTON - DIRECT BY FALK

1 for me to feel for others besides myself.

2 Q: And what do you think some of your triggers are? What do
3 you mean by triggers?

4 A: Me feeling separated from everybody else, me trying to
5 separate, push people away.

6 Q: And in the past, when you've felt that way, is that what
7 led to some of your offenses, do you think?

8 A: Yes, sir.

9 Q: And have you been on -- Dr. Swan diagnosed you with
10 having a depressive disorder. Have you been on any types of
11 medicines for depressions?

12 A: Not in the recent years.

13 Q: Is it a matter that they haven't been prescribed to you
14 or that they won't fill them while you're in custody?

15 A: I stopped. I refused to take them. I used self-control.
16 I didn't believe I needed medication. I learned how to,
17 through treatment, I learned how to control myself by using
18 self-meditative reasons.

19 Q: You said self-meditative reasons?

20 A: Yes.

21 Q: Okay. All right. So, you talked about some of your --
22 what's some of the high risk situations that you've thought
23 about? That's what you were talking about, you said there
24 were triggers and then the victim empathy, and what was some
25 of the other stuff that was helpful that you had when you were

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 127
MICAH ALLEN BILTON - DIRECT BY FALK

1 at Generations?

2 A: Like some of the high-risk factors that we came up with
3 were me being overly sexually active, feeling like I deserve
4 stuff when I want it and not when I want to wait for it,
5 feeling that I'm the bigger person most of the time, and that
6 basically I'm all about me instead of being about other
7 people.

8 Q: And so when you say we, is this the stuff that your
9 counselor -- so these are things that apply specifically to
10 your situation; is that correct?

11 A: Yes, sir.

12 Q: Now, were you also in -- and then you also were at South
13 Carolina Department of Corrections; is that correct?

14 A: Yes, sir.

15 Q: And sometime in January, they sent you to Broad River
16 Corrections?

17 A: Yes, sir.

18 Q: And when you were at Broad River, were you able to take
19 part in sex offender treatment there?

20 A: Yes, sir.

21 Q: Is that the program that's led by Sylvia Roberts?

22 A: Yes, sir.

23 Q: Now, give me sort of an idea how that works. Were you in
24 a special section of the dorm over there?

25 A: There was a bunch of people, and each one of us was

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 128
MICAH ALLEN BILTON - DIRECT BY FALK

1 placed in specific rooms in specific dorms.

2 Q: Okay. So, were you in a dorm with other people who were
3 in sex offender treatment?

4 A: I was in the dorm with all kinds of people, sir.

5 Q: Oh, okay. And so would you all have meetings or how --
6 what -- what ---

7 A: Every day at 8:30, we would be woken up and sent to a
8 school building where we meet as a group and work on
9 assignments.

10 Q: I see, so, you weren't necessarily housed in one dorm,
11 but you all met together in a group?

12 A: Yes, sir.

13 Q: About how many people were there?

14 A: There was A Group and B Group. A Group had about 10
15 people in it and the same as B Group, about 10.

16 Q: And so the treatment that you got at Broad River, how was
17 that -- was that similar to what was going on at Generations?

18 A: Similar, but it focused more on statistics of us
19 reoffending, saying that since we been arrested for it, that
20 we're -- one out of 20 people get caught -- most of them get
21 away, but the people that get caught, if they haven't
22 reoffended within the first five years of being out that they
23 won't reoffend again. If they had, they would be placed in
24 treatment.

25 Q: But as far as did y'all then talk about, you know, your

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 129
MICAH ALLEN BILTON - DIRECT BY FALK

1 offense cycle and your triggers?

2 A: Yes, sir.

3 Q: Did you learn anything more about your triggers while you
4 were at sex offender treatment or at ---

5 A: Broad River?

6 Q: Yeah, sex offender -- Ms. Sylvia Roberts' program at
7 Broad River?

8 A: Yes, sir.

9 Q: How was it -- what more did you learn?

10 A: That -- I'm more -- I want to -- still that I want to be
11 the bigger man and I basically take advantage of the weak.

12 Q: Because I think you made a statement to Dr. Swan's saying
13 that what you learned at the Broad River sort of picked up
14 where Generations left off or ---

15 A: Yes, sir.

16 Q: What did you mean by that?

17 A: I was removed from the group home without finishing
18 treatment. The State had released me to my sister, and when I
19 went back to -- I went to SCDC it was similar to that picked
20 up where I went off, and it went in more detail describing the
21 cycles and how they take place, how to recognize how my mind
22 thought and my body was wanting it to myself.

23 Q: Okay. You said that the State released you to your
24 sister?

25 A: Yes, sir.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 130
MICAH ALLEN BILTON - DIRECT BY FALK

1 Q: So, when you were released from Generations, you were
2 required to live with your sister?

3 A: Yes, sir.

4 Q: Okay. Where have you -- let me come back around to
5 treatment, but while we're talking about that, where have you
6 been working? Like since you were 16, where have you worked?

7 A: I've worked landscaping. I've worked at recycling place
8 in Johnsonville. I can't describe ---

9 Q: The Recycling Center?

10 A: Yeah. And I've worked with my father-in-law, John Cooke.

11 Q: And was there also something about fencing?

12 A: Oh, yes, sir. I worked with, before getting recently
13 incarcerated, I worked with my cousin doing fencing.

14 Q: Okay. And so about how many days a week were you -- do
15 you work?

16 A: When I was doing fencing, I was working every day and
17 when I wasn't working -- well, sometimes I worked twice a day.
18 I did fencing and worked with my father-in-law -- for my
19 father-in-law at night.

20 Q: And fencing, you're putting up fences on farms?

21 A: Houses, farms, buildings, wherever they need it.

22 Q: Okay. Is that like cyclone fencing or wooden fencing or
23 ---

24 A: Wooden, vinyl, chain link.

25 Q: Everything.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 131
MICAH ALLEN BILTON - DIRECT BY FALK

1 A: Everything.

2 Q: And so if you were released -- okay, so about how many
3 hours a day are you working; I mean you're ---

4 A: I start working -- when I was doing the fencing, I'd wake
5 up at 6 o'clock in the morning and leave the house and got off
6 maybe 3:00, 4:00, and I'd have to be -- leave the house at 5
7 o'clock to work for my father-in-law.

8 Q: Uh-huh (affirmative response).

9 A: And I finished that whatever time I get done with the
10 offices; it might be 2:00, 3:00 in the morning.

11 Q: So, since you were 16, what's the longest period of time
12 you went without a job?

13 A: I can't really say. I mean, even when I wasn't working
14 another job, I was working for my father-in-law. So, I can't
15 really say.

16 Q: So, you've been pretty much working?

17 A: Pretty much, yes, sir.

18 Q: Okay. And if you were released, where would you live?

19 A: As soon as I'm released, I'd be living with my
20 grandfather.

21 Q: And what city would that be in?

22 A: Galivants Ferry.

23 Q: Where?

24 A: Galivants Ferry.

25 Q: Okay. And you'd have a job when you were released?

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 132
MICAH ALLEN BILTON - DIRECT BY FALK

1 A: Yes, sir.

2 Q: Okay. You were talking -- sorry for going down that
3 little tangent with you there, but let's go back to you said
4 the treatment you got when you were at sex offender treatment
5 with Sylvia Roberts sort of picked up where they left off --
6 well, not really they left off, you -- you were removed from
7 the group home before you completed the treatment there; is
8 that correct?

9 A: Yes, sir.

10 Q: Okay. And so, then you had treatment with Sylvia Roberts
11 and was it more intensive, did it go deeper?

12 A: Yes, sir.

13 Q: What kind of age range were those other people who were
14 in this treatment?

15 A: 30s, 40s, 50s; I was youngest one in the group.

16 Q: Okay. And when you were talking about victim empathy,
17 what does that mean for you?

18 A: Empathy, taking yourself and putting yourself in the
19 victim's shoes and seeing how they feel about the situation,
20 how they would feel -- or how you would feel if you were them
21 and make sure you think about how would you feel if this was
22 being done to you.

23 Q: So, how do you think your acts have affected the two
24 victims?

25 A: I do not know the right words to use, but I've destroyed

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 133
MICAH ALLEN BILTON - DIRECT BY FALK

1 their life, basically. I put them through an emotional roller
2 coaster that they've had to bottle their emotions up most of
3 their life. They basically shut down to other people and push
4 people away instead of living a regular life and being open
5 with people and trusting people.

6 Q: Did you -- have you experienced some of that firsthand?

7 A: Yes, sir.

8 Q: What age were you when that happened to you?

9 A: Four, five; again at 10, 11, and 12.

10 Q: And were those people that you knew?

11 A: Yes, sir.

12 Q: Four and five; was that -- who was that?

13 A: My uncle.

14 Q: Your uncle?

15 A: Yeah.

16 Q: Ten, 11, and 12; who was that, was that an aunt?

17 A: A step-aunt.

18 Q: A step-aunt. Were you originally blaming your victims or
19 -- I think there was some comment that you made to Dr. Swan,
20 well, you thought it was okay because it didn't hurt you any.
21 Do you still think that way or ---

22 A: No, sir.

23 Q: Do you have any -- obviously, you know that the pain that
24 something like that would cause. Do you have any concerns or
25 what are your concerns if you were released? Would it happen

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 134
MICAH ALLEN BILTON - DIRECT BY FALK

1 again?

2 A: No, sir.

3 Q: How are you different than you were the day that you pled
4 guilty on that last offense?

5 A: Honestly, even people that have been locked up would say
6 that I've matured over my year or two in prison. I ain't the
7 same. I'm not -- I don't act childish no more. I sit down
8 and I hold conversations with people. I act more responsibly.
9 I put my goals before I go out and just -- I think before I
10 act now.

11 Q: What are your goals?

12 A: My goals when I get out and get a job, a steady job, keep
13 working, and basically that probably ain't the right point to
14 make right now, but to give my children the life that I never
15 had and that I that I thought I wanted that they don't have to
16 grow up without a parent there for them. That -- I guess
17 you'd say, I'm missing a piece of their life.

18 Q: Do you think your time at -- with Ms. Roberts' program,
19 do you -- did that give you some tools to help you with that?

20 A: Yes, sir.

21 Q: Again, you were here yesterday when Dr. Swan testified?

22 A: Yes, sir.

23 Q: Were there any things that she testified that you think
24 were not accurate as far as y'all's conversations?

25 A: She got my age thing, at least, I was locked up when I

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 135
MICAH ALLEN BILTON - DIRECT BY FALK

1 was 15, not 16 and ---

2 Q: So, you were 15 when you went to the group home?

3 A: Yes, sir.

4 Q: Okay.

5 A: I was released in January of 2012, and I was locked back
6 up April 19th, 2012.

7 Q: Okay.

8 A: So, she said that it was an eight-month range. I was
9 only out for like two-and-a-half months.

10 Q: Okay.

11 A: And I was 17 when I was locked back up. I turned 18 in
12 jail.

13 Q: And then you were 19 by the time you pled?

14 A: I was either -- yeah, I believe, 19 or 20.

15 Q: Okay. How old are you right now?

16 A: About to be 23 in two weeks.

17 Q: Okay. So, before you went to the group home, how old
18 were you when that offense, when that event happened, how old
19 were you?

20 A: When I went to the group home?

21 Q: No. No, the offense that led to you going to the group
22 home, how old were you?

23 A: Fifteen.

24 Q: Fifteen. And then the second time, how old were you when
25 the ---

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 136
MICAH ALLEN BILTON - CROSS BY MORROW

1 A: Seventeen.

2 Q: Seventeen. Is there anything else you want this jury to
3 know?

4 A: Not at this time.

5 Q: I beg your pardon?

6 A: No, sir.

7 Q: No further questions. Please answer any questions Mr.
8 Morrow has.

9 CROSS EXAMINATION OF MICAH ALLEN BILTON BY MR. MORROW:

10 Q: Mr. Bilton, you would agree, you were charged as a
11 juvenile in 2010, lewd act on a minor?

12 A: Yes, sir.

13 Q: And convicted of assault and battery of a high and
14 aggravated nature?

15 A: Yes, sir.

16 Q: And you would agree that the Judge made a specific
17 finding on the record that that was a sexually violent
18 offense?

19 A: Yes, sir.

20 Q: Okay. You would also agree that at that time, you had a
21 lawyer, correct?

22 A: Yes, sir.

23 Q: And you had a Guardian ad Litem appointed to represent
24 your interest?

25 A: That part I'm not aware of.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 137
MICAH ALLEN BILTON - CROSS BY MORROW

1 Q: Okay. Let me show you what's a document and I want to
2 see if you can tell me what that document is. Have you had an
3 opportunity to look at that document?

4 A: This is the first time I've seen it, sir.

5 Q: Is it an official court document?

6 A: Yes, sir.

7 Q: Does it appoint a Guardian ad Litem for you?

8 A: Yes, sir.

9 Q: Okay. Thank you. You would agree that in 2010, your
10 victim was your four-year-old stepsister?

11 A: Yes, sir.

12 Q: And you were living with her at that time that you
13 offended?

14 A: Yes, sir.

15 Q: And you received a commitment to the Department of
16 Juvenile Justice for an indeterminate period of time not to
17 exceed your 21st birthday, and that sentence was suspended and
18 you were allowed to be placed in a group home for treatment,
19 correct?

20 A: Yes.

21 Q: Okay. And you went to Generations Group Home?

22 A: Yes, sir.

23 Q: And as part of your treatment at Generations Group Home,
24 they would have had to provide the court with a summary of
25 your treatment, correct?

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 138
MICAH ALLEN BILTON - CROSS BY MORROW

1 A: I believe so; yes, sir.

2 Q: Okay. I'm going to show you a document. I want to see
3 if you can recognize that document or if you have seen it
4 before? Mr. Bilton, is that a discharge summary from
5 Generations Group Home?

6 A: Yes, sir. It says date of discharge.

7 Q: Does it have a court seal on it?

8 A: Yes, sir.

9 Q: Could you please flip to the fourth page? Would you read
10 the highlighted portion?

11 A: It says, Micah has been able to successfully complete the
12 Generation part -- alternative to group care, and completed
13 the program.

14 Q: Thank you. So according to Generations, you successfully
15 completed treatment?

16 A: According to them.

17 Q: Okay. When you got out of Generations, you were out as
18 you said for two months?

19 A: Two-and-a-half months.

20 Q: And you got -- went to live with your step-sister or your
21 sister, correct?

22 A: Yes.

23 Q: And while you were living with your sister, the sister
24 who took you in after having -- you having been previously
25 been convicted of an assault and battery of a high and

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 139
MICAHA ALLEN BILTON - REDIRECT BY FALK

1 aggravated nature with your victim being a four-year-old
2 child, you offended against her daughter, correct?

3 A: Yes, sir.

4 Q: And that was a six-year-old girl?

5 A: Yes, sir.

6 Q: And going back to your 2010 charge, were you required to
7 register as a sex offender?

8 A: No, sir.

9 Q: So, you'd gotten a little bit of a break in 2010?

10 A: Yes, sir.

11 Q: And you could've -- but in 2015, you pled guilty to
12 criminal solicitation of a minor?

13 A: Yes, sir.

14 Q: And that was less than two months after getting out?

15 A: That's when I -- yes, sir.

16 Q: Thank you. No further questions for this witness, Your
17 Honor.

18 THE COURT: Redirect.

19 REDIRECT EXAMINATION OF MICAHA ALLEN BILTON BY MR. FALK:

20 Q: Did you think that there was more to do at the
21 Generations Group Home as far as the treatment; did you feel
22 like you had completed it?

23 A: I know had, when I left, I still had to do victim impact.
24 and I can't remember, I know I still had to do victim impact.
25 They never gave me that assignment.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 140
MICAH ALLEN BILTON - REDIRECT BY FALK

1 Q: When you sort of -- as far as the date you were released
2 from the group home, how many -- do you recall the last time
3 you went to one of the classes at the group home?

4 A: It was the day before.

5 Q: The day before?

6 A: Yes, sir.

7 Q: And had they given you any assignments on that day?

8 A: I just had finished presenting one of my assignments and
9 I had to go meet with my counselor to get my next one. They
10 woke me up that morning to go court and when I went to court
11 they released me.

12 Q: Okay. What was that assignment that you did that day; do
13 you recall?

14 A: It was my -- I had been getting in a lot of aggressive
15 trouble, so she made me do an assault, not assault, but anger,
16 management lesson. I got in a couple of fights before I left.

17 Q: Okay. No further questions.

18 THE COURT: All right. Anything further?

19 MR. MORROW: Nothing further from the State.

20 THE COURT: All right. You may step down.

21 You may call your next witness.

22 MR. FALK: The Respondent rests.

23 THE COURT: All right. Members of the jury, we have to
24 take up motions at this time. If you would be so kind as to
25 step into the jury room. We'll be back with you in about 10

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 141
MOTIONS

1 minutes and we'll finish this trial.

2 (REPORTER'S NOTE: Jury exits courtroom. The following takes
3 place outside the presence of the Jury.)

4 MOTIONS:

5 THE COURT: All right. Any motions at this time?

6 MR. FALK: First, Your Honor, we would renew all the
7 motions that we have made prior to preserve them for the
8 record, and then I would also renew my motion for a directed
9 verdict primarily on the basis that I made at the close of the
10 State's case.

11 THE COURT: All right. I'm gonna deny those motions.

12 BY THE COURT:

13 THE COURT: I have your verdict form and the charge if
14 you'd like to come take a look at it and make sure it's in
15 order.

16 (REPORTER'S NOTE: Counsel reviews and consents to jury charge
17 and verdict form.)

18 THE COURT: We'll take a short break and we'll get ready
19 and come back.

20 *****OFF THE RECORD*****

21 **(On the Record.)**

22 THE COURT: They're coming. I already told him.

23 Thank you.

24 (REPORTER'S NOTE: Jury enters courtroom.)

25 THE COURT: All right. The State's recognized for your

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 142
CLOSING BY MORROW

1 closing statement.

2 MR. MORROW: Thank you, Your Honor.

3 CLOSING STATEMENT BY MORROW:

4 MR. MORROW: Micah Bilton is a sexually violent predator.
5 He has twice been convicted of sexual offenses against
6 children under the age of six. He's offended again after
7 sanction, he has offended despite knowing the consequences of
8 his actions. As a victim of sexual abuse himself, he knew
9 what being taken advantage of by an adult could do to a child.
10 He knew the pain, he knew the destruction such an act could
11 cause. He knew all this yet decided to take his frustrations
12 out on two innocent children. He could've done almost
13 anything else. He could've gone to therapy; he could've
14 talked to a school guidance counselor; he could have sought or
15 looked for a treatment provider on the internet; he could've
16 called someone; he could have chosen to break the cycle. He
17 could've decided to be a positive influence on others. But,
18 what did Micah Bilton do? He sexually molested his four-year-
19 old stepsister. She was innocent; she just happened to be in
20 the same household as Mr. Bilton. He had easy access to her.
21 Micah Bilton knew how much hurt he could cause, yet he still
22 offended against another child. He could've broken the cycle.
23 And after being convicted in juvenile court, he was given an
24 immense opportunity. He was allowed to go to treatment. He
25 successfully completed that treatment. The Judge did not

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 143
CLOSING BY MORROW

1 require him to register as a sex offender. Essentially, after
2 he was released from treatment in 2010 or 2012 after that
3 conviction, he had a clean slate. That's a rare opportunity
4 in our criminal judicial system.

5 At that point, Micah Bilton had a choice with a clear
6 record and unencumbered with a register as a sex offender, he
7 could've gone about his life and become a positive influence.
8 He could've broken the cycle of abuse. But, what did he do?
9 Micah Bilton offended against his six-year-old niece, the
10 daughter of his sister who took him in after he was released
11 from treatment. He knew the pain it could cause his victim.
12 He knew there were resources out there to help him fight
13 because he had just been released from a place that provided
14 those resources. He'd just got out of treatment, you heard
15 him testify, two and a half months. He could've broken the
16 cycle; instead, he chose to continue the cycle of abuse and to
17 become the monster who had hurt him.

18 And why are we here today? We're here because we're
19 seeking -- the State is here because it's seeking the civil
20 commitment of Mr. Bilton to a secure facility in Columbia
21 where he will be getting -- receive sex offender treatment and
22 so that the public will be protected during that sex offender
23 treatment process. The secure facility is under the
24 jurisdiction of the South Carolina Department of Mental
25 Health. It's not about punishment; it's about treatment.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 144
CLOSING BY MORROW

1 Now, what does the State have to prove to you? The State
2 has to prove that Mr. Bilton has been convicted of at least
3 one sexually violent offense. You're gonna have the exhibits
4 the State moved into evidence and you're gonna -- and you're
5 gonna see that he was convicted of two sexually violent
6 offenses. You'll also see -- the State also has to prove that
7 he suffers from a mental abnormality or personality disorder
8 that makes him likely to reoffend if not confined for
9 treatment. And to that effect, the State has provided you
10 with the expert testimony of Dr. Amy Swan.

11 Now proof beyond a reasonable doubt is not proof beyond
12 all doubt, it's not proof beyond any doubt, it's not proof
13 beyond every doubt; it's proof beyond a reasonable doubt.
14 Proof beyond a reasonable doubt is proof that leaves you
15 firmly convinced. If you are firmly convinced that Mr. Bilton
16 is a sexually violent predator, then you must find for the
17 State. If you, however, are not firmly convinced that Mr.
18 Bilton is a sexually violent predator, then you must find for
19 the Defense.

20 Let's talk about the evidence provided to you. The State
21 has provided you with certified copies of his two convictions
22 for sexually violent offenses. He's been convicted of both
23 assault and battery of a high and aggravated nature in 2010
24 and criminal solicitation of a minor in 2015. You'll have
25 copies of those documents back there in the jury room while

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 145
CLOSING BY MORROW

1 you deliberate. And the South Carolina Sexually Violent
2 Predator Act under Section 44-48-30 defines what a sexually
3 violent offense is, and you'll see that, and the Judge will
4 talk to you in a minute about that. The State has proven that
5 Mr. Bilton has been convicted of two sexually violent
6 offenses. The State has also proven that he suffers from a
7 mental abnormality or personality disorder that makes him
8 likely to reoffend.

9 We have provided you with the testimony of Dr. Swan, a
10 forensic psychologist, who has been practicing for over 19
11 years, who's licensed in the States of Florida, Missouri and
12 South Carolina, who has completed 910 hours of post-doctorate
13 education in the area of sex offenders, and 289 hours
14 specifically in the areas of sex offender recidivism. She
15 served on the Board of Psychology for over 10 years in the
16 State of Florida, where she was appointed by the Governor.
17 She's a member of the American Psychological Association and
18 the Association for the Treatment of Sexual Abusers, and she's
19 testified that she completed over 1,000 sex offender
20 evaluations, 875 of those being sexually violent predator
21 evaluations. She talked to you about her methodology, the
22 fact that she reviews multiple records including criminal
23 history, mental health history, disciplinary history, prior
24 treatment, medical history, occupational history, and
25 educational history. She talked about her -- how she

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 146
CLOSING BY MORROW

1 conducted an in-person interview with Mr. Bilton and how she
2 talked to him about his prior offenses. She also talked to
3 you about, about how she ordered a PPG test to assess his
4 current sexual interests and she also looked at his -- both
5 his static and dynamic risk factors for re-offense. After
6 considering all of that information, Dr. Swan's expert opinion
7 is that Mr. Bilton is a sexually violent predator and will
8 reoffend if not confined to a secured facility for treatment.

9 She diagnosed Mr. Bilton with pedophilic disorder. Mr.
10 Bilton sexually assaulted his four-year-old step sister in
11 2010; he sexually assaulted his six-year-old niece in 2013 and
12 2014. He demonstrated significant sexual arousal to children
13 on his PPG test, and Mr. Bilton had sexual conduct with female
14 children over a period of three to four years. She also
15 diagnosed him other specified depressive disorder and other
16 specified anxiety disorder.

17 She talks about his static risk factors. He scored on
18 the 3 on the Static-99. He scored higher than 57 percent of
19 the other sex offenders. And, Dr. Swan spoke to you about the
20 weaknesses of the Static-99R. She told you how it
21 underestimates risk because it fails to account for the
22 dynamic risk factors and for re-offense and it only looks at
23 whether or not he's likely to reoffend in the next five years.
24 In this act, we're looking at whether he's likely to reoffend
25 in his lifetime. So, she looked -- to supplement that, she

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 147
CLOSING BY MORROW

1 looked at his dynamic risk factors, and she identified four
2 separate dynamic risk factors that increased Mr. Bilton's
3 likelihood to reoffend including offense supportive attitudes,
4 lifestyle, impulsiveness, poor problem solving skills, and
5 dysfunctional coping. And dysfunctional coping can be
6 demonstrated by the fact that he, he has chosen to offend when
7 dealing with feelings of loneliness or inadequacy. She also
8 talked to you about the PPG testing, about his current sexual
9 interests, where he demonstrated arousal to children.

10 Now, let's talk about the Defense's case. Breanna Cooke
11 is Mr. Bilton's common law wife. She's the mother of his
12 children. She stated she was not sure if the children would
13 live with them if he was released, and you saw how she
14 hesitated when Mr. Falk asked her that question. I submit to
15 you that she loves him and she wants him out, but at the same
16 time, that motherhood instinct caused her to hesitate a bit
17 when she answered that question.

18 Let's talk about Micah Bilton. He stated he did not
19 complete sex offender treatment while at Generations Group
20 Home. Court documents say otherwise. He also -- he also
21 stated that after less than two months after getting out of
22 the group home, he reoffended. This time, against his niece,
23 and it was the daughter of the person who took him in, who
24 gave him a second chance.

25 So, ladies and gentlemen, the cycle at some point has to

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 148
CLOSING BY FALK

1 end. Micah Bilton needs treatment. He has demonstrated
2 through his actions that he cannot control his sexual urges
3 and he has become the monster that haunted him. He needs
4 treatment and the public needs protection during the treatment
5 process. The State has proven its case beyond a reasonable
6 doubt. Micah Bilton is a sexually violent predator. The
7 State asks that you commit him to the South Carolina Sexually
8 Violent Predator Treatment Program so that he can get the help
9 that he needs and that the public can be protected during the
10 treatment process.

11 Thank you.

12 THE COURT: Mr. Falk?

13 CLOSING STATEMENT BY FALK:

14 MR. FALK: May it please the Court, ladies and gentlemen
15 of the jury, Mr. Morrow.

16 Let's keep one thing in mind, today Micah Bilton is 22
17 years old. A 22-year-old kid who was 19 when he committed the
18 last offense. Arguments should be different when we're
19 talking about a 35-year-old man and a 19-year-old kid.

20 I have asked Dr. Swan about this quote that came from a
21 Supreme Court case where it said that a children's -- a
22 child's character is not well-formed as an adults, his traits
23 are less fixed and his actions less likely to be evidence of
24 irretrievable depravity. Dr. Swan knows that he's a 19-year-
25 old kid and she's holding him to a standard of a 24-year-old,

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 149
CLOSING BY FALK

1 30-year-old man. I don't know, but at the end of the day, he
2 is a -- he was a 19-year-old kid when he committed that last
3 offense.

4 Some members of this jury, might have one time been 19-
5 year-old boys. Some members of this jury may have at one time
6 known a 19-year-old boy. I'm willing to bet that some members
7 of this jury will appreciate that 19-year-old kids can do
8 really stupid things. I am a father of three boys. The
9 youngest is 19, and I can attest that 19-year-old boys do
10 stupid things. From about the age -- as I'm sure a lot of
11 y'all know, if y'all have raised boys, from about the age of
12 14 on up to some point in the future, they can do stuff that's
13 unbelievably stupid. Micah Bilton did some horrible acts,
14 sexually related horrible acts; there's no question about
15 that. But, I don't think it's fair that we should be trying
16 to treat him to the standard of a man who has been -- of an
17 adult man who is fully formed, fully cognitive, had a normal
18 lifestyle, and then committed some acts like this. He is a
19 young kid. He is still a young kid. You saw him up on the
20 stand. He's still a young kid. He might be 22 today; he
21 might 23 in two weeks from today, but he's still a young kid
22 and he's done some stupid things. And there's no doubt that
23 he got some breaks along the way. I mean, the court system
24 gives breaks to juvenile offenders. He clearly was a juvenile
25 when that first offense came and he got a break; all juveniles

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 150
CLOSING BY FALK

1 get breaks. You know, the criminal justice system deals with
2 that and probably the sentences he got at one time were
3 lighter because of recognizing his age and, I mean, I can
4 appreciate that he's gotten some breaks. But, the question
5 that we need to focus on today is not whether or not he has
6 committed some crimes, and he has committed crimes, he's pled
7 guilty to the crimes. One as a juvenile; one as a 19-year
8 old. He has committed crimes. But, the question we have to
9 wrestle with today is whether or not he has a mental disease
10 and whether it is likely that he would reoffend. Those, I
11 contend are the two issues that I want y'all to focus. Does
12 he have a mental disease and is he likely to reoffend.

13 Dr. Swan testified about likelihood to reoffend. I'm not
14 sure I understood exactly what she was saying. She was
15 talking about his likelihood to reoffend and she said, well,
16 nowadays, you know, we've changed the rules how we used to do
17 this. Now, all we do is make a comparison as to how likely is
18 this person to reoffend compared to another person, but she
19 never gave us any absolute numbers. She said we no longer do
20 that. And I tried to, you know, make a point with another one
21 of my sort of simplistic analogies, but whether or not one
22 person -- one event is more likely than another event doesn't
23 necessarily prove how likely any one of those events are to
24 occur, and that's what I was talking about before. Let's
25 assume that there are one in 300,000,000 chances to win the

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 151
CLOSING BY FALK

1 lottery on any given Friday or any given Saturday. If one
2 person buys a ticket, he's got one in 300,000,000.' If another
3 person buys 10 tickets, he's got 10 in 300,000,000. So, if I
4 compare the one person to the other person, the one guy says
5 well I'm 10 times more likely to win the lottery tomorrow.
6 That still doesn't tell you -- it's still very not meaningful
7 that either of those people are gonna win the lottery
8 tomorrow. We're talking about what an absolute risk to
9 reoffend is and some kind of relative risk. She did admit
10 that had this been last October, before they changed the
11 rules, she would've had to tell you that his likelihood to
12 reoffend is 7.9 percent. 7.9 percent, is that likely?
13 Sometimes when I can't sleep, I'm staying up late and I'm
14 watching -- I don't know if any of y'all ever watched some of
15 those World Series Poker games. You know, where they're
16 playing this Texas Hold'em and a lot of times it'll show you
17 that one guys got, you know, what his likelihood of winning
18 the hand are. They'll show one person has got 93 percent
19 chance of winning the hand and the other person's got a 7
20 percent chance of winning the hand. If you've got a 7 percent
21 chance of winning a poker hand, you go all in, 7 percent is
22 not likely. If I'm betting every dollar I have, I don't bet
23 every dollar, I don't go all in on a hand I've got a 7 percent
24 chance to win. The State wants you to consider that he is
25 likely to reoffend because that's what they have to prove to

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 152
CLOSING BY FALK

1 you, likelihood to reoffend; it's 7 percent.

2 Dr. Swan -- and as I told you before, clearly my two
3 witnesses are biased. Breanna Cooke, she's got two little
4 kids; she's biased. She wants her -- she wants the father of
5 those two children -- two little children to have a
6 relationship with those children. Whether or not they're
7 gonna live together, but she said she wouldn't worry about him
8 being around her children, she didn't fear for her children,
9 and she wanted him to have a relationship with her children.
10 We know that and that's a bias. I can appreciate that.

11 And, Mr. Cooke has a bias too. He's, you know, but at
12 the end of the day, anybody here who's a grandfather, if they
13 think that their grandson is gonna -- if they think that
14 their, you know, son-in-law is gonna do something to one of
15 their grandchildren, consider about what they're gonna say.
16 I'm not sure that the maternal interest of two kids or the
17 grandparent interest is any stronger, but I contend that a
18 grandparent interest about worrying about a grandchild is
19 pretty strong interest. Mr. Cooke told you today, he could
20 easily cut his losses, severed his ties from Micah Bilton, but
21 he hasn't. He thinks he's a good worker. He understands the
22 charges that he has. He's not concerned about it. He's not
23 concerned that he's gonna hurt his grandchildren.

24 Now, I get my guys are biased over here. Micah Bilton is
25 obviously also biased. Dr. Swan has a bias also and I think

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 153
CLOSING BY FALK

1 it came through in her testimony. Dr. Swan, I wrote this
2 quote down. She said that when she did her report, she wrote
3 down everything that had happened in his life up until today.
4 She wanted to include in the report and she wanted to
5 investigate. That's a nice saying. She missed one huge piece
6 of the puzzle here, one huge piece of the puzzle and it's also
7 a piece of the puzzle that the State never talked about. He
8 got sex offender treatment while he was at Broad River. He
9 was in a confined facility. He met every day with a group of
10 sex offenders. He got treatment. He got the piece of
11 treatment that he felt that he didn't get while he was at
12 Generations. Whether or not the State says that he had
13 completed the treatment or not, Micah Bilton said that the day
14 before he was released, he was in a class, and they had given
15 him an assignment, and the next day they said he was ready to
16 go to court. Now, maybe the Court was done with him -- I
17 mean, maybe Generations was done with him; that doesn't mean
18 that he completed the treatment. They said he completed the
19 treatment; they pushed him out the door, that he was no longer
20 be on the State dollar at the Generations Group Home, then
21 he's gonna go over and live with his sister. Micah Bilton
22 knows now that he didn't finish the treatment and he got that
23 treatment when he was at Broad River while he was in custody
24 on the program that Sylvia Roberts was leading.

25 Dr. Swan tried to push off saying, well, I don't think it

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 154
CLOSING BY FALK

1 was enough. But, how can you say it's not enough if you don't
2 really know that much about the program. She said, well I've
3 read some group notes and they only meet once a week. He's
4 saying that meet every day. Who's right? The person probably
5 who had been to the classes is probably right. She was
6 concerned that the treatment wasn't thorough enough, but she
7 doesn't know anything about the treatment.

8 And here's another place where I think her bias is sort
9 of showing through because she already is saying that he is
10 only a moderate and average risk. Had it been October, he
11 would have been a moderate to low risk, but they changed the
12 scale. But she said, well, you know, the Static-99 is not
13 that good because it discounts all the dynamic risk factors.
14 Fair enough.

15 Lifestyle impulsivity, she hammered him on the fact that
16 he's a young man and should be out there finding his own place
17 to live and that her one example of lifestyle impulsivity was
18 the fact that he went to live with his sister. The Court --
19 when he got out of Generations, he was released to his
20 sister's custody. That's why he lives with his sister. This
21 is a hardworking kid. He's been working all his life. The
22 Court told him he had to live with his sister. Dr. Swan wants
23 to try and say that he was following -- you know, that they
24 were following the procedures; released from the group home
25 into the custody of his sister and she's trying to mark that

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 155
CLOSING BY FALK

1 against him and saying it's some sign of impulsivity. How can
2 he win?

3 Unrealistic goals. She hammered him saying his goals
4 were unrealistic and that's part of his poor problem solving
5 because she said he didn't think he needed treatment. I think
6 we heard what his goals are. You heard what his goals are.
7 He wants to continue to work and he wants to be a parent for
8 his two children and he wants to try and provide for them the
9 childhood that he did not get because of his upcoming --
10 upgrowing -- upbringing; that's a goal. He's got goals. The
11 fact that she's saying he didn't -- he doesn't think he needs
12 any more treatment, they're talking on two different planes
13 because she's not understanding that he had treatment when he
14 was at sex offender treatment and, you know, he thinks he's
15 gotten it. It finished off the pieces that he didn't get
16 while he was at Generations.

17 Offense supportive attitudes is another thing that she
18 said, and that's all about the victim empathy is that maybe he
19 was, you know, what he was thinking at the time that he
20 committed the offense might've been kind of blaming the
21 victim, you know, well, it didn't hurt me; it's not gonna hurt
22 them. He knows that's not now. I mean, you saw the emotion
23 in his -- in his testimony when he was talking about what he
24 knows the impact that it's had on, on the victims in his life.

25 I kind of tried to talk to you in my opening argument

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 156
CLOSING BY FALK

1 about this confirmation bias. That if you already had the
2 opinion that you -- if you have an opinion at the outset, it's
3 not gonna take you very much information in order to confirm
4 that opinion, and I think that's what Dr. Swan had done here.
5 I think she didn't think he was ready to go. I don't know,
6 maybe because she, she likes the program that they do in
7 Florida and she wants him to do the program in Florida; I'm
8 not sure, but she did not want -- she did not want to release
9 this person. She's wrote her opinion that he had to be
10 convicted. And the kind of nugget she grabbed onto was, you
11 know, the fact that he committed these offenses when he was a
12 young kid. Granted, he did that, but does he have a mental
13 disease or defect? Well, she's saying he's got these dynamic
14 risk factors, he's impulsive and he doesn't have realistic
15 long-term goals. She's trying to find a reason to say that
16 he's a sexually violent predator. We don't need any reason to
17 find out -- for us all to know that he's committed some
18 crimes, but does he have a mental disease or personality
19 disorder and is he likely to reoffend? Just remember, he has
20 not been committed, he has not been convicted or pled guilty
21 to any violent crime. His crimes are considered sexually
22 violent crimes under the sexually violent predator treatment
23 statute, but they are not violent crimes under the South
24 Carolina Criminal Code.

25 I think you know that that man up there that you saw

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 157
CLOSING BY FALK

1 testify, you know he's not violent, and I don't think there's
2 anything in here that we saw, testimony, or heard anything
3 about that he's a predator. You know, he's not the predator
4 that you think about the guy luring kids with candy or
5 something like that, no. He's a 19-year-old kid and he did
6 some stupid things. But at the end of the day, one more
7 point, I'm sorry -- I'm sort of racing around here. Dr. Swan
8 testified that the more times you get arrested, the more
9 likely it is you're gonna commit, you know, you're gonna keep
10 getting arrested for sexually violent crimes. And she
11 admitted, unless there's an intervening factor and she
12 admitted that an intervening factor would be getting
13 treatment. Dr. Swan kind of glossed over the fact that he got
14 treatment. That's the intervening factor. That's the --
15 that's the assurances that we have today that it's okay for us
16 to release him today because he went to the Sexually Violent -
17 - he went to the Sex Offender Treatment Program and he got
18 treatment. He's a different person. He's not the 19-year-old
19 kid that committed those offenses; he's a different man as
20 anybody would by, you know. Think what kind of lifestyle that
21 is as a 19-year-old kid at Broad River Corrections being in
22 that environment. Yeah, you're gonna wake up; you're gonna be
23 a different man coming out of there. He is a different
24 person. There's no way that you can't say that the fact that
25 he has been through the criminal justice system, being in

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 158
CLOSING BY FALK

1 prison is not gonna change you; he's gotten that wakeup call.

2 Please consider whether or not you think the State has
3 proven to you beyond a reasonable doubt that it is a
4 likelihood that he's going to reoffend, and that means
5 consider whether or not you believe that a 7.9 percent chance
6 of committing an offense is the likelihood that he's going to
7 reoffend. I think at the end of the day, if you can sort of
8 divorce yourself from some of the revulsion that you may have
9 about the offenses that he's pled guilty to, taken
10 responsibility for, if you can sort of separate that and now
11 look at this boy right now or I guess maybe more this man,
12 right now, does he need to go be committed to a program for
13 long term care and treatment or does he need to be released
14 and go on about his life, go back to work, re-establish a
15 connection with his children. I am hopeful that once you give
16 a fair consideration to this, you'll determine that the State
17 has not proven beyond a reasonable doubt that Micah Bilton is
18 a sexually violent predator. And I'm convinced, I am hopeful,
19 that you will appreciate the fact that we're not talking about
20 a 35-year-old man who did some of these things in the past,
21 but we're talking about a young kid who did some bad things in
22 the past; he's a different person today, he's gotten treatment
23 and I am hopeful that you'll find that he is not a sexually
24 violent predator.

25 Thank you.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 159
CHARGE TO JURY

1 THE COURT: Thank you. Mr. Morrow?

2 MR. MORROW: Nothing from the State, Your Honor.

3 CHARGE TO JURY:

4 THE COURT: Members of the jury, it is now my duty as the
5 Trial Judge to instruct you on the law applicable to this case
6 and, in that regard, it is your duty as jurors to accept and
7 apply the law as I now state it to you. Furthermore, it is
8 your exclusive duty to decide all the issues of fact in this
9 case and to determine the effect, the value, and weight of the
10 evidence. Both parties have the right to expect that you will
11 carefully consider and evaluate the evidence and apply the law
12 of this case to it so that, in the end, both of these parties
13 will have received a fair and impartial trial.

14 Furthermore, you and I have separate duties to perform.
15 As the Trial Judge, it is my responsibility to preside over
16 this trial and to rule upon the admissibility of the evidence
17 offered during the trial. In that regard, you are to consider
18 only the evidence before you. Thus, you are to consider only
19 the testimony which has been given from this witness stand
20 together with any exhibits admitted into the record as
21 evidence. Furthermore, I have the additional duty to charge
22 you on the law applicable to this case and, in that regard, it
23 is your duty to accept and apply the law as I now state it to
24 you.

25 In this trial, you are the sole and exclusive judge of

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 160
CHARGE TO JURY

1 the facts. Do not infer that I have any opinion about the
2 facts in this case from anything I have said or done during
3 the course of this trial. In this regard, the law simply does
4 not permit me to have an opinion about the facts. As jurors,
5 it is your duty alone to determine the effect, the value and
6 weight of the evidence presented during the course of this
7 trial.

8 Furthermore, it is your job as jurors to determine the
9 credibility and believability of the witnesses who have
10 testified. In determining the believability of witnesses who
11 have testified in this case, you may believe one witness over
12 many or many over one. You may believe a part of the
13 testimony of a witness and reject the remaining part. You may
14 believe the testimony of a witness in its entirety or reject
15 it in full. You may consider whether the witness has an
16 interest in the result of the trial, whether the witness is
17 prejudice toward either party, the opportunity for the witness
18 to have seen the matters and things about which the witness
19 may testify, and the way the witness acts on the witness
20 stand.

21 Furthermore, evidence may be direct or circumstantial.
22 Direct evidence is testimony by a witness about what the
23 witness personally saw or heard or did. Circumstantial
24 evidence is indirect evidence. In other words, it is proof of
25 one or more facts from which one can find another fact. You

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 161
CHARGE TO JURY

1 are to consider both direct and circumstantial evidence
2 equally.

3 In most civil cases tried in a Court of Common Pleas, the
4 burden of proving a claim is by the greater weight of the
5 evidence or the preponderance of the evidence. However, in
6 this type case, under this Sexually Violent Predator Statute,
7 the State's burden is higher than that. Here the State has
8 the burden of proof to prove its case beyond a reasonable
9 doubt. Proof beyond a reasonable doubt is proof that leaves
10 you firmly convinced that the Respondent is a sexually violent
11 predator. There are few things in this world that we know
12 with absolute certainty. So, in this type of case, the law
13 does not require proof that overcomes every possible doubt.
14 However, if based on your consideration of the evidence, you
15 are firmly convinced that Micah Bilton is a sexually violent
16 predator, then you must return a verdict for the State and
17 circle yes on the verdict form. If, on the other hand, you
18 believe there is a real possibility that he is not a sexually
19 violent predator, you must give him the benefit of the doubt
20 and find a verdict for Micah Bilton by circling no on the
21 verdict form. Reasonable doubt may arise from the evidence
22 which is in the case or from the lack or absence of evidence
23 in the case. It is up to you to determine whether or not
24 reasonable doubt exists.

25 Furthermore, the Rules of Evidence ordinarily do not

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 162
CHARGE TO JURY

1 permit witnesses to give their opinions or conclusions. An
2 exception to this rule exists for witnesses we call expert
3 witnesses. A witness, who by education and experience, has
4 become an expert in some art, science or profession, may give
5 an opinion as to the subject matter in which the witness
6 claims to be an expert and may also give the reasons for that
7 opinion. You should consider any expert opinion given by a
8 witness and like any other evidence, give it the weight you
9 think it deserves. If you decide that the opinion of an
10 expert witness is not based on sufficient education and
11 experience or if you decide that the reasons given in support
12 of the opinion are not sound or that the opinion is outweighed
13 by other evidence, you may disregard the expert's opinion
14 entirely. An expert witnesses' testimony is to be given no
15 greater weight than that of any other witness simply because
16 the witness is an expert. Furthermore, you are not required
17 to accept an expert's opinion even though it is
18 uncontradicted.

19 Members of the jury, the State of South Carolina has
20 brought this case under the Sexually Violent Predator Law of
21 this state. In this regard, the State seeks the involuntary
22 civil commitment of Micah Bilton for long-term control, care,
23 and treatment in a secure facility. You need to understand
24 that this is not a criminal proceeding seeking incarceration,
25 but rather is a proceeding seeking civil commitment. The

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 163
CHARGE TO JURY

1 State of South Carolina alleges that Micah Bilton is a
2 sexually violent predator under the law. Micah Bilton denies
3 that he is a sexually violent predator. Therefore, the burden
4 of proof is on the State to prove by evidence sufficient to
5 satisfy each of you beyond a reasonable doubt that Micah
6 Bilton is a sexually violent predator.

7 In this regard, if the State is unable to meet the burden
8 of proof as to one or more of the elements of this claim, then
9 Micah Bilton is entitled to a finding that he is not a
10 sexually violent predator. Please understand that Micah
11 Bilton is not accused of committing a crime in this
12 proceeding. As you heard from the testimony, he did have
13 previous charges for which the Court sentenced him and he has
14 now completed his service for those charges. The State is now
15 alleging that he is a sexually violent predator. The State
16 has the burden of proof in this case and must prove its case
17 beyond a reasonable doubt. If you find that the State has not
18 met this burden, then Micah Bilton will be released. However,
19 if you find that the State has met its burden of proof and
20 find that Micah Bilton is a sexually violent predator, then he
21 will not be released but will be committed to a secure
22 treatment facility in Columbia operated by the Department of
23 Mental Health.

24 The elements which the State must prove beyond a
25 reasonable doubt are that Micah Bilton has been convicted of a

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 164
CHARGE TO JURY

1 sexually violent offense. Convicted of a sexually violent
2 offense means a person has been found guilty of a sexually
3 violent offense. I charge you that criminal solicitation of a
4 minor is a sexually violent offense and the State must prove
5 that Micah Bilton suffers from a mental abnormality or
6 personality disorder that makes him likely to engage in acts
7 of sexual violence if not confined in a secure facility for
8 long-term control, care, and treatment.

9 Inherit in these two elements is that the State must
10 prove the requirement that Micah Bilton's mental abnormality
11 or personality disorder causes him serious difficulty in
12 controlling his behavior. In other words, the State must
13 prove beyond a reasonable doubt that the individual it seeks
14 to commit suffers from a mental illness which he cannot
15 sufficiently control without the structure and care provided
16 by a mental health facility rendering him otherwise likely to
17 commit a dangerous act.

18 In order for you to better understand the elements of the
19 State's cause of action, I'm going to define for you some of
20 the terms which I have just used. Mental abnormality means a
21 mental condition affecting a person's emotional capacity that
22 predisposes the person to commit sexually violent offenses.
23 This mental abnormality or personality disorder must cause the
24 person serious difficulty in controlling his behavior.

25 Likely to engage in acts of sexual violence means the

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 165
CHARGE TO JURY

1 person's propensity to commit acts of sexual violence is of
2 such a degree as to pose a menace to the health and safety of
3 others so that he is dangerous to others. Again, I remind you
4 that the burden of proof is on the State to prove to your
5 satisfaction beyond a reasonable doubt that Micah Bilton has
6 been convicted of a sexually violent offense, as I have
7 instructed you, and also suffers from a mental abnormality or
8 personality disorder that makes him likely to engage in acts
9 of sexual violence if not confined in a secure facility for
10 long-term control, care, and treatment.

11 If the State carries its burden of proof and convinces
12 you beyond a reasonable doubt as to each of these two elements
13 of its cause of action, it is entitled to a finding that Micah
14 Bilton is a sexually violent predator. However, if the State
15 does not meet the burden of proof as to one or both of these
16 elements, then Micah Bilton is entitled to a finding that he
17 is not a sexually violent predator.

18 Ladies and gentlemen, I'm now drawing near the end of my
19 charge and I want you to clearly understand that you are not
20 partisans or advocates for the State or the Respondent. You
21 do not serve as jurors to reward your friends or punish your
22 enemies. In this regard, you have been selected by the
23 parties to be fair and impartial jurors. It is your duty by
24 your joint deliberations to decide this case. Then to the
25 facts as you find them, you should take and apply the law, as

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 166
BY THE COURT

1 given to you by this Court, and thus arrive at a verdict.

2 When you have accomplished this responsibility, you will have
3 satisfied your oath as jurors and you will have discharged
4 your duty to this Court.

5 Madam Clerk, if you will hand the Foreman the verdict
6 form.

7 All right, Mr. Foreman, I have handed you the verdict
8 form, but I want you to clearly understand that the verdict
9 must be unanimous. Just because I have handed the verdict
10 form to the Foreman, it does not mean that it is his verdict
11 alone. Furthermore, if you have any questions during your
12 deliberations at all, if you would write them down, knock on
13 the jury room door and hand them to the bailiff. She will
14 bring them to me and I will answer them at that time. At this
15 time, I would ask that you step into the jury room but do not
16 begin your deliberations until told to do so. I have to
17 consult with the attorneys first.

18 Thank you, but do not begin.

19 (REPORTER'S NOTE: Jury exits courtroom. The following takes
20 place outside the presence of the Jury.)

21 BY THE COURT:

22 THE COURT: All right. Any objections from the State?

23 MR. MORROW: No objections from the State, Your Honor.

24 THE COURT: Respondent?

25 MR. FALK: No, Your Honor.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 167
VERDICT OF JURY

1 THE COURT: All right. Take a look at the items that are
2 in evidence and, if they're in order, we'll send them back.

3 (REPORTER'S NOTE: Counsel reviews and consents to exhibits.)

4 THE COURT: Everything in order?

5 MR. MORROW: Everything is in order, Your Honor.

6 THE COURT: All right. Bring the alternate out, send in
7 the evidence and tell them to begin.

8 (REPORTER'S NOTE: Juror 149 enters courtroom.)

9 THE COURT: You were our backup quarterback. If anyone
10 had gotten sick or had a family emergency or couldn't serve,
11 you had to be here to fill in for them. But, everybody's well
12 and everybody's back there and they're deliberating so you're
13 are free to go and thank you for your service.

14 JUROR 149: Thank you.

15 THE COURT: I hope you have a good weekend.

16 All right. We'll be at ease until we have a question or
17 something pops up.

18 (REPORTER'S NOTE: Deliberations begin. 11:30 A.M.)

19 **(RECESS)**

20 *****OFF THE RECORD*****

21 **(On the Record.)**

22 (REPORTER'S NOTE: Jury enters courtroom. 12:03 P.M.)

23 VERDICT OF JURY:

24 THE COURT: All right, Mr. Foreman, has the jury reached
25 a verdict?

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 168
BY THE COURT

1 MR. FOREMAN: Yes, we have, Your Honor.

2 THE COURT: If you'd be so kind as to hand the verdict
3 form to the Clerk.

4 Thank you.

5 CLERK: Yes, sir.

6 THE COURT: All right. If you would publish the verdict
7 form, I find it in order.

8 CLERK: Yes, sir. The State of South Carolina, County of
9 Horry, In the Court of Common Pleas, Case Number 2015-CP-26-
10 8535, in the matter of the care and treatment of Micah Allen
11 Bilton, Respondent. Verdict: Has the Petitioner, the State
12 of South Carolina, proven beyond a reasonable doubt that the
13 Respondent, Micah Allen Bilton, is a sexual violent predator
14 under the South Carolina Sexually Violent Predator Act? Yes,
15 Micah Allen Bilton is a sexually violent predator.

16 BY THE COURT:

17 THE COURT: All right. Need for further polling by the
18 Respondent?

19 MR. FALK: Not at this time, Your Honor.

20 THE COURT: All right. Thank you. Members of the jury,
21 I appreciate your efforts. I appreciate all you have done.
22 You are excused for the week. You've earned a three-year
23 exemption by being here as well and you will get a little bit
24 of money in the mail for your service. So, you all are
25 excused.

In the Matter of Micah Allen Bilton - 2015-CP-26-08535 169
BY THE COURT

1 Everybody else remain seated.

2 (REPORTER'S NOTE: Jury exits courtroom.)

3 THE COURT: All right. You got an order for me?

4 MR. MORROW: Yes, Your Honor.

5 THE COURT: Any motions from the Respondent at this time?

6 MR. FALK: None at this time.

7 THE COURT: All right. Thank you very much.

8 I've enjoyed working with you all.

9 Y'all have a good weekend.

10 (ADJOURNED - 12:30 P.M.)

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY

CERTIFIED COPY
IN THE FAMILY COURT
FIFTEENTH JUDICIAL CIRCUIT
2017 MAY 18 PM 1:59

2010-JU26-086

CLERK OF COURT
HORRY COUNTY, SC

IN THE INTEREST OF:

ORDER

MICAH BILTON,
A Juvenile

FILED
HORRY COUNTY
2010 MAY -4 PM 1:49
MELANIE HUGHES-WARD
CLERK OF COURT

DATE OF HEARING: May 4, 2010
JUDGE: Honorable Ronald Norton
COURT REPORTER: Kay Richardson
ATTORNEY FOR SOLICITOR: Alicia Richardson
ATTORNEY FOR JUVENILE: Paul Rathbun
GUARDIAN AD LITEM: John Thomas
PARENT/GUARDIAN PRESENT: Malcolm Walters, father
Jennifer Walters, step-mother
Tammy Bilton, mother
SCHOOL: Aynor High School

A verified petition has been filed in the Court alleging that the above named juvenile was a delinquent child in that he did, in Horry County, South Carolina, commit the crime(s) of:
2010-JU26-086 LEWD ACT ON A MINOR
in violation of the Code of Laws of South Carolina (1976) or of the common law.

At a **DETENTION REVIEW HEARING** held on this date, the juvenile was present and represented by an attorney. The juvenile waived the right to a detention hearing, waived notice and accepted service on the above charge(s). The juvenile admitted guilt to having committed the crime(s) of:

**2010-JU26-086 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE
REDUCED FROM LEWD ACT ON A MINOR** in violation of the Code of Laws of South Carolina (1976) or of the common law.

BASED upon the facts presented, the Court finds and concludes:

1. This Court has jurisdiction over the parties and subject matter of this action.
2. This is a sexually violent offense pursuant to S. C. Code Ann. Section 44-48-30.
3. The juvenile had a complete and thorough pre-adjudicatory evaluation by the Department of Juvenile Justice, which was provided to the Court
4. The issue of sex offender registry shall be held in abeyance until the juvenile completes sex offender treatment

STATE'S
EXHIBIT

Dec 6-15-17

RAY

THEREFORE, IT IS ORDERED:

1. That the juvenile be **COMMITTED** to the Department of Juvenile Justice for an indeterminate period not to exceed his twenty-first birthday, suspended upon the service of **90 days**, which shall be suspended upon the securing of **ALTERNATIVE PLACEMENT** and compliance with terms of probation.
2. This is a sexually violent offense pursuant to S. C. Code Ann. Section 44-48-30.
3. That the juvenile shall be placed on probation under the supervision of the Department of Juvenile Justice until his 18th birthday.
4. That the juvenile shall comply with the following terms of probation:
 - a. The juvenile and the juvenile's parents/guardians shall cooperate with alternative placement in an approved facility and shall abide by all rules of that placement.
 - b. A review hearing shall be held if placement is not located prior to the completion of the determinate sentence.
 - c. The juvenile shall cooperate with sex offender counseling.
 - d. The juvenile and the juvenile's parents/guardians shall cooperate with an alcohol and drug evaluation and any counseling or testing recommended by the evaluation. The juvenile shall be subjected to random drug testing upon completion of alternative placement. Failure to take a requested test shall be considered a positive result.
 - e. The issue of Sex Registry shall be held in abeyance. At the time of discharge from counseling or placement, the treatment provider shall provide to the court, the juvenile's attorney and the solicitor a discharge summary which includes recommendations as to whether the juvenile is at risk to reoffend and whether the juvenile should register as a sex offender. A REVIEW HEARING shall be held before the juvenile is released from probation to determine whether he should be placed on the Sex Registry.
 - f. The juvenile shall cooperate with a positive adult role model or mentoring program.
 - g. The juvenile shall cooperate with a mental health assessment and follow all recommendations to include but not limited to individual and family counseling to address all issues outlined in the DJJ evaluation as well as follow-up with a psychiatrist for medication management.
 - h. The juvenile's father is placed under an affirmative duty to cooperate with all services.
 - i. That the juvenile shall comply with the following *standard* terms of probation:
 1. The juvenile shall report to the Probation Counselor as often as he/she is told to.
 2. The juvenile shall keep all appointments with other agencies to which he/she may be sent by the Court or by the Probation Counselor.

RAN

3. The juvenile shall have no unexcused absences from school, obey the rules of school and do all school work to the best of his/her ability.
4. The juvenile shall cooperate with his/her parents and obey their rules or the rules of the home in which he/she lives.
5. The juvenile shall cooperate with the Probation Counselor.
6. The juvenile shall be home by a certain hour every night, which time shall be set by the Court, or by the Probation Counselor in conjunction with his/her parents.
7. The juvenile shall not be with any person who is committing a crime or breaking the law.
8. The juvenile shall not commit any crimes or break any laws.
9. The juvenile shall not use any type of illegal drugs or drink any form of alcoholic beverages.
10. The juvenile shall not have in his/her possession any type of weapon which could be used to hurt another person.

IF STRAIGHT PROBATION/ NO SUSPENDED SENTENCE:

Failure of the juvenile and/or parent or guardian to comply with the terms of this Order can result in a sentence of up to 6 months for Contempt of Court.

AND IT IS SO ORDERED.

MAY 4, 2010

Conway, South Carolina


FAMILY COURT JUDGE

Handwritten initials

STATE OF SOUTH CAROLINA **CERTIFIED COPY** IN THE FAMILY COURT
 COUNTY OF HORRY 2017 MAY 16 PM 2:03 FIFTEENTH JUDICIAL CIRCUIT

2010-JU26-086

IN THE INTEREST OF:

MICAH BILTON,
 A Juvenile

CLERK OF COURT
 HORRY COUNTY, SC

ORDER

FILED
 HORRY COUNTY
 2010 APR 13 PM 12:44
 MELANIE HUGGINS-WARD
 CLERK OF COURT

DATE OF HEARING: APRIL 13, 2010
 JUDGE: HONORABLE RONALD NORTON
 COURT REPORTER: KAY RICHARDSON
 ATTORNEY FOR SOLICITOR: ALICIA RICHARDSON
 ATTORNEY FOR JUVENILE: PAUL RATHBUN
 GUARDIAN AD LITEM: JOHN THOMAS
 PARENT/GUARDIAN PRESENT: MALCOLM WALTERS

A verified petition has been filed in the Court alleging that the above named juvenile was a delinquent child in that he did, in Horry County, South Carolina, commit the crime(s) of:
2010-JU26-086 LEWD ACT ON A MINOR AGE LESS THAN 14
 in violation of the Code of Laws of South Carolina (1976) or of the common law.

At a **DETENTION REVIEW HEARING** held on this date, the juvenile was present and represented by an attorney and Guardian Ad Litem. A **pre-adjudicatory evaluation** has been performed on this juvenile.

At this time, the State has indicated that additional information has been received in this matter from Marion County DSS and Marion County Sheriff's Office. Therefore, the State with consent of the juvenile's attorney and Guardian Ad Litem requests a continuance to provide all additional information to the juvenile's attorney, Guardian Ad Litem and the evaluators.

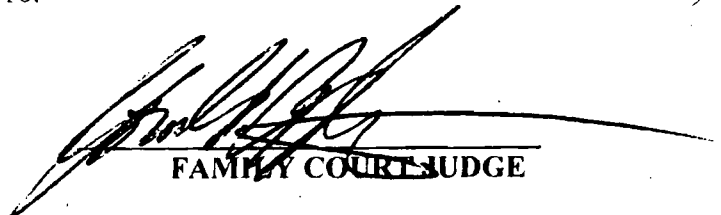
THEREFORE, IT IS ORDERED:

1. **This matter shall be continued and the juvenile shall remain in detention until May 4, 2010 at 8:00 AM.**
2. All additional information shall be provided to the juvenile's attorney, Guardian Ad Litem and the evaluators.
3. The evaluators shall provide all parties an addendum to the pre-adjudicatory evaluation based on their review of the additional information prior to the juvenile's return to court on May 4, 2010.

AND IT IS SO ORDERED.

APRIL 13, 2010

Conway, South Carolina


 FAMILY COURT JUDGE

STATE OF SOUTH CAROLINA

COUNTY OF
STATEHorry
VS.

Micah Allen Bilton

A:

Race: Sex: M Age: 20

DOB: SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Galivants Ferry, SC 29544-8438

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Minor/ criminal solicitation of a minor

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS2601309

A/W#: 2015GS2601309

Date of Offense: 4/19/2013

S.C. Code § : 16-15-0342

CDR Code #: 2999

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-15-0342 of the S.C. Code of Laws, bearing CDR Code # 2999

☒ 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. (MB (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

Spratlin, Martin D. SCB77061 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 7 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of 30 days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*: the balance is suspended with probation for 1

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 7 days☐ 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. 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)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 1339.00

PTUP _____ days/hours Public Service Employment

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

Other: sex offender registry
sex offender registry
no contact w/ victim

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

Presiding Judge

Judge Code: 2140

Sentence Date: 3/03/15

Clerk of Court/ Deputy Clerk

Court Reporter: Natalie Dahl

SCCA/217 (03/2011)

STATE'S EXHIBIT

6-15-17 de

WITNESSES

Bradley Thompson Horry County Police
Department

ARREST WARRANT NUMBER

2015GS2601309
CDR: 2999 16-15-0342
DOA: 6/20/2014

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015-GS-26- 01309

The State of South Carolina

County of Horry

Martin D. Spratlin

14HC2743

**CLERK OF COURT
HORRY COUNTY, SC**

COURT OF GENERAL SESSIONS

MARCH, 2015 TERM

THE STATE

vs.

Micah Allen Bilton
[REDACTED]
Galivants Ferry, SC 29544-8438
DOB: [REDACTED]
SSN: [REDACTED]

ATTORNEY: W. Thomas Floyd

**Indictment for
CRIMINAL SOLICITATION OF A MINOR**

Jimmy A. Richardson, II, Solicitor

ORIGINAL

CERTIFIED COPY

2017 MAY 16 PM 1:20

2015 MAR 23 PM 12:43
PLED GUILTY/TRIAL
COURT DATE

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on March 26, 2015, the Grand Jurors of Horry County present upon their oath:

CRIMINAL SOLICITATION OF A MINOR

CDR: 2999 16-15-342

That Micah Allen Bilton, a person eighteen years of age or older, did in Horry County on or about April 19, 2013, knowingly contact or communicate with or attempt to contact or communicate with , a person under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to participate in a sexual activity as defined in Section 16-15-375(5), in violation of Section 16-15-342, S. C. Code of Laws, 1976, as amended.

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


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

CLERK OF COURT
HORRY COUNTY, SC

2017 MAY 16 PM 1:20

CERTIFIED COPY

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE MATTER OF THE CARE AND
TREATMENT OF

MICAH ALLEN BILTON,
Respondent

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2015-CP-26-08535
)
)
) ORDER OF COMMITMENT
)
)
)

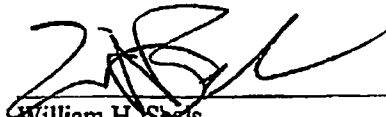
The trial of this case was held in the County of Horry in the Court of Common Pleas the week of June 13, 2017. A jury of citizens from Horry County heard this case pursuant to a request for a jury trial filed by the State. Assistant Attorney General Christopher A. Morrow represented the State and James K. Falk, Esquire, represented the Respondent. The jury having heard the presentation of the evidence made the following findings of fact pursuant to S. C. Code Ann. Sections 44-48-90 and 44-48-100:

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

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

- (a) Respondent is committed to the Department of Mental Health for his long-term control, care and treatment;
- (b) Respondent is to continue to be detained at the ^{Horry}~~Richland~~ County Detention Center, and then transported to the secure facility of the South Carolina Department of Mental Health, at 4460 Broad River Road, Columbia, SC 29210. The Detention Center is to transport Respondent on such scheduled date as it coordinates with the Department of Mental Health.

AND IT IS SO ORDERED.



William H. Seals
Fifteenth Judicial Circuit
Court of Common Pleas

June 13, 2017
Horry, South Carolina

RECEIVED

JUL 03 2017

SC Court of Appeals

FILED
HORRY COUNTY
JUL 16 2017
CLERK OF COURT
COURT HOUSE, SC

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE MATTER OF THE CARE AND
TREATMENT OF

MICAH ALLEN BILTON,
Respondent

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2015-CP-26-08535

VERDICT

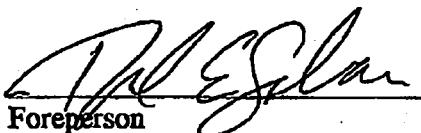
Has the Petitioner, the State of South Carolina, proven beyond a reasonable doubt that the Respondent, Micah Allen Bilton, is a sexually violent predator under the South Carolina Sexually Violent Predator Act?

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

X

YES, Micah Allen Bilton is a Sexually Violent Predator.

NO, Micah Allen Bilton is not a Sexually Violent Predator.


Foreperson

June 16, 2017
Conway, South Carolina

RECEIVED

JUL 08 2017

SC Court of Appeals

FILED
HORRY COUNTY
2017 JUN 16 PM 12:15
REAN M. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER **2015CP2608535**

South Carolina State of

Micah Allen Bilton

PLAINTIFF(S)

DEFENDANT(S)

Attorney for: ☐ Plaintiff ☐ Defendant

Submitted by: **CLERK OF COURT**

☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);

RECEIVED

JUL 03 2017

SC Court of Appeals

- ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Other: _____
- ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

- ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order, (formal order to follow) ☐ Statement of Judgment by the Court

ORDER INFORMATION

WE THE JURY, FIND THAT MICAH ALLEN BILTON IS A SEXUALLY VIOLENT PREDATOR.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

6/16/2017

Circuit Court Judge - WILLIAM H. SEALS, JR.

2157
Judge Code6/16/2017
Date**For Clerk of Court Office Use Only**

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Christopher Andrew Morrow PO Box 11549 Columbia, SC
29211-1549

James Kristian Falk PO Box 1058 Charleston, SC 29402

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter-DIXIE EUBANK

Renee N. Elvis - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

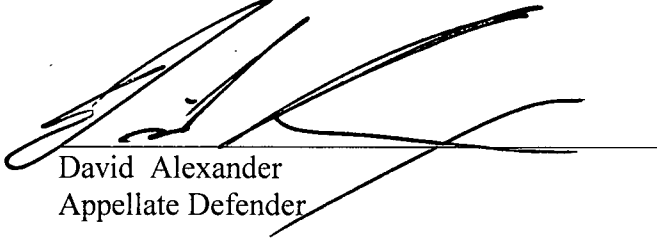
ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



David Alexander
Appellate Defender

RECEIVED

OCT 04 2018

SC Court of Appeals

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

ATTORNEY FOR APPELLANT

This 4th day of October, 2018.