

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

G. Edward Welmaker, Circuit Court Judge

IN THE MATTER OF THE CARE AND TREATMENT OF
CALVIN J. YAWN,

RECEIVED

FEB 27 2013

SC Court of Appeals

APPELLANT

APPELLATE CASE NO. 2012-210426

RECORD ON APPEAL

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1 (Whereupon Plaintiff's exhibits 1 - 4 were marked for
2 identification)

3 (Whereupon Defendant's exhibits 1 - 8 were marked for
4 identification)

5 MS. WIYGUL: I believe we've settled it kind of through
6 negotiation. We're in agreement to keep question 3 and drop
7 question 2.

8 THE COURT: Drop 2, keep 3. Okay.

9 MS. WIYGUL: And then, Your Honor, would you like to
10 address the jury charge?

11 THE COURT: The jury charge?

12 MS. WIYGUL: Yes, Your Honor. The -- I believe the
13 State has submitted ---

14 THE COURT: Yeah.

15 MS. WIYGUL: --- pretrial charges also.

16 MR. FLORES: Pretrial was just the internet jury
17 charge.

18 THE COURT: Yeah, that I just gave?

19 MR. FLORES: Yeah, that's the only thing ---

20 THE COURT: You ---

21 MR. FLORES: --- pretrial.

22 THE COURT: --- don't want me to do that?

23 MS. WIYGUL: Your Honor, I'd just ask that you use your
24 jury charge.

25 THE COURT: I mean, is that -- isn't that pretty much

1 what I just told them, ---

2 MR. FLORES: Yes, Your Honor..

3 THE COURT: --- behave yourself. But today will be
4 just during lunch. But, yeah, what I just told that jury,
5 that's ---

6 MS. WIYGUL: Yeah, ---

7 THE COURT: --- pretty much what I'm going to tell them
8 during the lunch break.

9 MS. WIYGUL: Your Honor, just for planning purposes
10 because Mr. Yawn's sister's going to need to run out to pick
11 him up lunch, do you anticipate us starting the trial prior
12 to lunch or pick the jury, then go to lunch, then start it?

13 THE COURT: Why don't we just pick the jury, then go to
14 lunch. And I'd like to -- and then if we're ready to start
15 back at 1:15 maybe, 1:30 we can get it done by four, can't
16 we? Get it to the jury?

17 MR. FLORES: I believe we can.

18 THE COURT: Okay. So in this case I'm just going to
19 tell them this is a -- that he has been confined, Mr. Yawn
20 has been confined in the custody of South Carolina
21 Department of Mental Health through an involuntary civil
22 commitment ---

23 MR. FLORES: He hasn't been.

24 THE COURT: He has not been.

25 MR. FLORES: This is the trial to determine that.

1 THE COURT: Since he's still ---

2 MS. WIYGUL: He has been held at the Greenville County
3 Detention Center.

4 THE COURT: He's already been out then?

5 MS. WIYGUL: No, Your Honor. The ---

6 THE COURT: But, I mean, his release is ---

7 MR. FLORES: He's completed the active portion of ---

8 THE COURT: Okay.

9 MR. FLORES: --- the sentence. He does have probation
10 to ---

11 THE COURT: Okay.

12 MR. FLORES: --- complete.

13 THE COURT: Okay. So this is -- so the petition is
14 that he ---

15 MR. FLORES: He should be committed.

16 THE COURT: He should be committed for long-term
17 control, care and treatment under the Sexually Violent
18 Predator Act, is that ---

19 MS. WIYGUL: Correct.

20 THE COURT: That's the way I'll introduce the case.
21 All right. Y'all can be seated. What I'll do is I'll give
22 y'all a little time when we get the list.

23 MS. WIYGUL: Thank you, Your Honor.

24 THE COURT: It'll be -- don't try to look over all 35
25 names, you know, but if it looks like we've lost a lot, then

1 I'll give you another moment to do that. But we'll see how
 2 it works. If you need more time, but look over the first 25
 3 or so and let's see if we -- as soon as you get the list,
 4 y'all let me know when you've had enough time to look it
 5 over.

6 MS. WIYGUL: Thank you, Your Honor.

7 MR. FLORES: Thank you, Your Honor.

8 THE COURT: And then we'll have our jury come up.

9 (Pause)

10 THE COURT: All right. You can call our jury to come
 11 up.

12 (Pause)

13 (Whereupon the jury panel entered the courtroom at
 14 12:11 pm)

15 THE COURT: All right. Thank you very much, ladies and
 16 gentlemen. We're now ready to select a jury for the trial
 17 of the next case. This case will be starting this morning.
 18 Some of you maybe have heard some of the questions that I'll
 19 ask. I apologize for that. For the new jurors, we need to
 20 go through the same protocol.

21 This is a case that we're going to start in just a few
 22 moments. It's captioned In the Matter of the Care and
 23 Treatment of Calvin John Yawn. The action is brought by the
 24 State of South Carolina. They've brought a case under Title
 25 44 of our South Carolina Code. That portion is known as the

1 Sexually Violent Predator Act.

2 The State is making allegations that the Respondent is
3 a sexually violent predator and seeks to have the
4 Respondent, Mr. Yawn, involuntarily committed in a secure
5 facility for long-term care, treatment and control. Mr.
6 Yawn, of course, is defending the case. And he believes the
7 State cannot meet its burden of proof.

8 And we need to have jurors to hear the facts of the
9 case. I'll explain the law to you at the end of the case.
10 And then a decision can be made as to whether or not the
11 State has met its burden of proof.

12 I need to ask you some questions to determine your
13 eligibility to serve on this particular case, ladies and
14 gentlemen. First of all, is there any member of the jury
15 panel know or know of John, excuse me, Calvin John Yawn? If
16 you are related by blood or marriage to Mr. Yawn, if you
17 have a close business, a social or a personal relationship
18 now or in the past with Mr. Yawn, would you please stand.
19 Mr. Yawn is standing before you.

20 (No response)

21 **THE COURT:** Thank you. There is no response. Thank
22 you very much. Mr. Yawn, you may be seated.

23 Now would the fact, ladies and gentlemen, that Mr. Yawn
24 has been convicted of a sexual offense and completed his
25 criminal sentence related to that conviction in any way

1 prevent you or cause you to not be able to be a fair and
2 impartial juror in this case that's set for trial? The fact
3 that he has been convicted, that he has served his time,
4 completed his criminal sentence, would that affect your
5 ability to be a fair juror in this case if you were
6 selected?

7 (No response)

8 **THE COURT:** Thank you. There is no response.

9 Several witnesses may be called upon to testify in this
10 case, ladies and gentlemen. And I need to read those names
11 to you. One of the witnesses would be Sara Madden, Charlene
12 Yawn, Calvin Yawn, Dr. Marie E. Gehle. Is there any member
13 of the jury panel related by blood or marriage to any of
14 these potential witnesses? If so, would you please stand.

15 (No response)

16 **THE COURT:** Is there a member of the jury panel have a
17 close business, or social or a personal relationship, a
18 patient of Dr. Gehle? If you have any social contact with
19 any of these people, would you please stand.

20 (No response)

21 **THE COURT:** Thank you. There is no response.

22 Is there any member of the jury panel currently working
23 in the field of psychiatry, or psychology, or law or
24 formerly worked in any such field? If you have worked in
25 the past in the field of psychiatry, or psychology or law,

1 would you please stand. Or if you're now working in any of
2 those fields. All right. Your name, please, sir.

3 MR. GALBREATH: Nathan Galbreath.

4 THE COURT: All right. And the field in which you are
5 familiar is which field?

6 MR. GALBREATH: Law.

7 THE COURT: All right, sir. You're presently a lawyer,
8 is that correct?

9 MR. GALBREATH: That's correct.

10 THE COURT: All right. If you'd remain standing just a
11 moment. Yes, ma'am, your name?

12 MS. TIPTON: Cindy Tipton.

13 THE COURT: All right. And what ---

14 MS. TIPTON: I was a psychiatric nurse for five years
15 and a prison nurse for two years.

16 THE COURT: Okay. And how long ago was it that you did
17 that?

18 MS. TIPTON: Two years ago.

19 THE COURT: All right. The fact that you are -- I'm
20 going to explain the law to you. There'll be a psychiatrist
21 testifying. Would that affect your ability to be a fair
22 juror on this case? Either one of you? Do you believe that
23 you could apply the law that I tell -- that you could listen
24 to the testimony of these witnesses and use the background
25 that you have to apply to the facts and the law in this

1 case? You believe you could be a fair juror?

2 MS. TIPTON: Yes, sir.

3 THE COURT: All right. And do you believe you could,
4 sir?

5 MR. GALBREATH: I do.

6 THE COURT: All right. Thank you. You both may be
7 seated.

8 Is there any member of the jury panel formed or
9 expressed an opinion in any manner about the facts in this
10 case? If so, would you please stand.

11 (No response)

12 THE COURT: Is there a member of the jury panel aware
13 of any bias or prejudice that would interfere with your
14 ability to be a fair juror in this case if selected? If so,
15 would you please stand.

16 (No response)

17 THE COURT: Thank you. There is no response.

18 Is there any member of the jury panel or a member of
19 your immediate family ever been accused or convicted of
20 committing a sexual offense or is there any member of the
21 jury panel or a member of your immediate family ever been
22 the victim of a crime of a sexual assault? If you or a
23 member of your immediate family has ever been accused or
24 convicted or if you've ever been the victim or a member of
25 your immediate family ever been the victim, I'd just ask at

1 this time if you'd please stand. All right.

2 We have -- all right. Anybody -- if you would, just
3 please stand. Anyone else? All right. If you two, please,
4 could just come here, I need to just talk with you with the
5 attorneys just briefly. Right here with the court reporter.
6 We need to get close enough so that the court reporter can
7 hear the conversation.

8 (Whereupon a bench conference was held on the record)

9 **THE COURT:** If you'd stand right over here, please.
10 Your name, please.

11 **MR. SNEAD:** Joel Snead.

12 **THE COURT:** And have you been the victim or have you
13 been accused?

14 **MR. SNEAD:** My wife was a victim.

15 **THE COURT:** Okay. Would that affect your ability to be
16 a fair juror on this case?

17 **MR. SNEAD:** I don't think so.

18 **THE COURT:** In other words, you're going to be making a
19 determination as to his psychological -- how long ago was
20 it?

21 **MR. SNEAD:** I think I can make a fair judgment, but to
22 be perfectly honest with you, I'd rather not.

23 **THE COURT:** Well, I need to know why you'd rather not.

24 **MR. SNEAD:** Well, I think I can be fair.

25 **THE COURT:** You think you can?

1 MR. SNEAD: Yeah.

2 THE COURT: Are you sure you can?

3 MR. SNEAD: No. I'm ---

4 THE COURT: I'm going to -- I'm going to excuse you
5 from the trial of this case. You don't need to respond to
6 any of my other questions. If you'll just have a seat.

7 MR. SNEAD: Okay.

8 THE COURT: Yes, ma'am, if you'll come forward. Yes,
9 ma'am. How are you?

10 MS. BLASCO: My daughter-in-law was a victim of date
11 rape in college.

12 THE COURT: How long ago was that?

13 MS. BLASCO: They've been married ten years. So it was
14 further back.

15 THE COURT: Would that affect your ability to be a fair
16 juror in this case?

17 MS. BLASCO: I think it did affect her personality, but
18 I don't think ---

19 THE COURT: But how about you? Do you ---

20 MS. BLASCO: No, ---

21 THE COURT: --- think ---

22 MS. BLASCO: --- I don't think so.

23 THE COURT: You're going to make a decision on what
24 takes place in this courtroom and not what took place ten
25 years ago?

1 MS. BLASCO: Yeah, probably so. Yes.

2 THE COURT: Probably so?

3 MS. BLASCO: I think so.

4 THE COURT: Well, do you have any doubts at all or
5 could you be a fair juror?

6 MS. BLASCO: Well, I almost didn't even think about it,
7 but I know she was, you know. And she did tell my ---

8 THE COURT: That's why I asked the question.

9 MS. BLASCO: --- son when they started dating that she
10 was. I really don't know.

11 THE COURT: Well, each side deserves to have a fair
12 jury. So if you have any -- I'll excuse you from this case.

13 MS. BLASCO: Okay.

14 THE COURT: If you'd just be seated. Ma'am, you don't
15 need to respond to any other questions that I ask. If you'd
16 just be seated now, ---

17 MS. BLASCO: Okay.

18 THE COURT: --- I'll be asking some other questions.
19 Thank you. Y'all got those numbers down?

20 MS. WIYGUL: We do.

21 MR. FLORES: (Affirmative nod).

22 THE COURT: We'll be going through 22 now. We'll just
23 skip those two. Okay.

24 (Whereupon bench conference was ended)

25 THE COURT: At this time, ladies and gentlemen, I'm

1 going to ask the attorneys, if you would, please, stand and
2 introduce yourselves to the jury. Mr. Flores.

3 MR. FLORES: My name is Lloyd Flores. I work for the
4 Attorney General's Office.

5 MS. WIYGUL: My name is Elizabeth Wiygul. I practice
6 law here in Greenville.

7 THE COURT: Thank you, ladies and gentlemen. Is there
8 any member of the jury panel who has ever been represented
9 by either of these attorneys? If so, would you please
10 stand.

11 (No response)

12 THE COURT: Have you ever been involved in any
13 litigation in which either of these attorneys represented
14 the opposing side? If so, would you please stand.

15 (No response)

16 THE COURT: Is there any member of the jury panel
17 related by blood or marriage or have a business, a social or
18 a personal relationship with either of these attorneys? If
19 so, would you please stand.

20 (No response)

21 THE COURT: Thank you. There is no response.

22 Is there any member of the jury panel or a member of
23 your immediate family ever been involved in a civil
24 proceeding of commitment through probate court or otherwise?
25 If you've ever been involved in any kind of proceeding where

1 a person was civilly committed, would you please stand.

2 (No response)

3 THE COURT: Thank you. There is no response.

4 Is there a member of the jury panel who is a volunteer
5 or a member of any prison ministry or a prison outreach
6 program of any kind involving contact with folks that are
7 incarcerated? Prison fellowship, or Austin Wilkes or a
8 church group? If you're involved in any prison ministry, or
9 prison outreach or prison help program, would you please
10 stand. Yes, sir. Your name, please.

11 MR. LEMMONS: Bobby Lemmons.

12 THE COURT: Okay. And which organization are you
13 affiliated with?

14 MR. LEMMONS: Conestee First Baptist Church.

15 THE COURT: Okay. And you just go do a prison ministry
16 with your church?

17 MR. LEMMONS: Yes, sir.

18 THE COURT: All right. The fact that you're in the
19 prison, would that affect your ability to be a fair juror?

20 MR. LEMMONS: No, sir.

21 THE COURT: You could listen to the evidence and decide
22 the case on the law and the evidence and that alone?

23 MR. LEMMONS: Yes, sir.

24 THE COURT: All right. Thank you for sharing that.

25 You may be seated.

1 Both these parties are here looking for jurors to
2 decide the facts of this case. They deserve -- they desire
3 to have fair and impartial jurors. Is there any member of
4 the panel who for any reason whatsoever you believe in this
5 case you could not be a fair juror to both the State of
6 South Carolina, to Mr. Yawn, and render a verdict on the law
7 that I give you, the evidence that's presented and that
8 alone? If for any reason you believe you could not be a
9 fair juror, would you please stand.

10 (No response)

11 THE COURT: Thank you. There is no response. Any
12 other questions from the State?

13 MR. FLORES: Nothing further, Your Honor.

14 THE COURT: From Mr. Yawn?

15 MS. WIYGUL: Nothing, Your Honor.

16 THE COURT: All right. Let's empanel our jury.

17 MADAME CLERK: Petitioner strikes first.

18 MS. WIYGUL: Petitioner strikes 6.

19 MR. FLORES: I'm the Petitioner.

20 MS. WIYGUL: Oh, I'm sorry.

21 MR. FLORES: Petitioner would strike 18.

22 MADAME CLERK: Petitioner strikes 18.

23 MS. WIYGUL: Respondent strikes 6.

24 MADAME CLERK: Respondent strikes 6.

25 MR. FLORES: Petitioner strikes 11.

1 MADAME CLERK: Petitioner strikes 11.

2 MS. WIYGUL: Respondent strikes 14.

3 MADAME CLERK: Respondent strikes 14.

4 MR. FLORES: Petitioner strikes 10.

5 MADAME CLERK: Petitioner strikes 10.

6 MS. WIYGUL: Respondent strikes 15.

7 MADAME CLERK: Respondent strikes 15.

8 MR. FLORES: Petitioner strikes 3.

9 MADAME CLERK: Petitioner strikes 3.

10 MS. WIYGUL: Respondent strikes 16.

11 MADAME CLERK: Respondent strikes 16. I'll read these

12 back to you. Petitioner strikes 3, 10, 11 and 18.

13 MR. FLORES: Yes, ma'am.

14 MADAME CLERK: Respondent strikes 6, 14, 15 and 16.

15 MS. WIYGUL: That's correct.

16 THE COURT: You may call the jury.

17 MADAME CLERK: As I call your name, if you would,

18 please come forward and have a seat in our jury box. Jane

19 Cantrell, Kevin Hyde, Rebecca Jonas, Barbara Knight, Michael

20 Lype, Frances Cox, Flossie Cecile, Raymond Thompson, Amy

21 Harry, Vickie Wilson, Sheila Garren, David Herron.

22 THE COURT: Are there any legal matters we need to take

23 care of as far as the selection of the jury in this case,

24 from the State?

25 MR. FLORES: Nothing, Your Honor.

1 THE COURT: From Respondent?

2 MS. WIYGUL: No, Your Honor.

3 THE COURT: All right. Thank you very much. Ladies
4 and gentlemen who were not selected, I can now dismiss you
5 for today. If you would just stop back by the assembly
6 room, Ms. Olson will give you further instructions at that
7 time. You're excused. If you would, stop by the assembly
8 room for her instructions. Everyone else, please remain
9 seated while the jury departs.

10 (Whereupon the remaining jurors exited the courtroom)

11 THE COURT: Ladies and gentlemen, you've seen the
12 process by which you were selected. These attorneys, these
13 parties feel you're the best twelve people of all the pool
14 that can hear this case and make a good sound decision.

15 I look forward to working with you. We're going to be
16 working together as judges. You're going to judge the
17 facts. I'm going to judge the law.

18 I'm going to do everything I can to help the trial
19 progress in a timely manner. That's part of my job. We'll
20 take periodic breaks. If you need a break at any time, and
21 I haven't called for a break, please get my attention. You
22 raise your hand, speak to one of the bailiffs, Mr. Lynch
23 over to your right, Mr. Frazier at the back. You've had a
24 chance to meet them already.

25 You get their attention or get one of our other

1 attention. Ms. Hudgins is the young lady seated directly in
2 front of me. She's taking down everything that's said.
3 She's the court reporter. And she's going to keep a record
4 of the process.

5 Ms. Jones called your names earlier. She'll be
6 administering an oath to you in a few moments concerning the
7 trial of this case.

8 Cases take place in stages. The attorneys will have a
9 chance to make an opening statement to you. After that
10 there'll be witnesses testify, they'll be examined and cross
11 examined. At the end of all the evidence the attorneys
12 will, again, have a chance to address you in closing. At
13 that time, I'll instruct you on the law.

14 While the case is in progress it would be improper for
15 you to be talking about the case with each other, with
16 anyone else, you can -- the mere speculation about talking
17 about what you've heard so far or what this case is all
18 about and things of that nature. So your discussion about
19 the case will be limited to the time after I've instructed
20 you on the law.

21 Likewise, we'll take a lunch break and you may very
22 well meet family members, or business cohorts, or a friend
23 or have lunch with a fellow juror. If you find yourself
24 discussing the case with any of those people, they want to
25 know -- they're going to be curious about, well, did you get

1 picked? And what's the case about? And, oh, well, let me
2 tell you about this and I heard about that.

3 You tell any of those folks that you're committed as a
4 juror to not talk about the case, and that's your
5 obligation. We're in a process now of a jury trial. And as
6 a juror you're to refrain from discussing the case with
7 anyone else while it's in progress.

8 You're not to do any kind of independent research or do
9 any kind of social networking about this. That would be
10 improper and against the rules of the court.

11 We're going to be ready to start back. If you would be
12 back at 1:30. I believe that would give you time to get a
13 bite to eat, and we'll be ready to start at that time.

14 Don't discuss the case while you're out and about with
15 anyone. Don't let anyone discuss it with you. If you will
16 go with Mr. Lynch now, he'll show you where you are to
17 report back when we're ready to start at 1:30.

18 (Whereupon the jury exited the courtroom at 12:34 pm)

19 **THE COURT:** All right. We'll be ready to start back in
20 about fifty-five minutes, hopefully.

21 **MS. WIYGUL:** Thank you, Your Honor.

22 **THE COURT:** Everybody be back by then. We'll swear our
23 jury when they come back.

24 **MR. FLORES:** Thank you, Your Honor.

25 (Whereupon court was in recess at 12:35 pm)

1 (Whereupon court resumed at 1:43 pm)

2 **THE COURT:** You ready to proceed?

3 **MS. WIYGUL:** Yes, Your Honor.

4 **MR. FLORES:** Yes, Your Honor.

5 **THE COURT:** If the jury's ready, you can have them come
6 in.

7 (Whereupon the jury entered the courtroom at 1:44 pm)

8 **THE COURT:** ladies and gentlemen, I hope you had a good
9 lunch. We're now ready to proceed with the trial of the
10 case. At this time I'm going to have Ms. Jones from the
11 Clerk's Office administer an oath to you. After the oath is
12 given the attorneys will address you in their opening
13 statement.

14 Let me remind you that what the attorneys have to say
15 to you is not evidence. It's their statements. The
16 evidence will come from the testimony that's given, any
17 documents that may be presented for your review. But I urge
18 you to listen carefully as the attorneys address you.

19 I'm confident that each of them can give you some
20 insights to help you to be alert to matters that may develop
21 during the course of the trial. At this time I'll ask the
22 clerk to administer the oath.

23 **MADAME CLERK:** If you all would please rise and raise
24 your right hand. The correct response is, I will. You
25 shall well and truly try case number 2011-CP-23-2980 In the

OPENING STATEMENTS - MR. FLORES

23

1 Matter of the Care and Treatment of Calvin John Yawn and a
2 true verdict rendered according to the law and the evidence
3 so help you God.

4 THE JURY: I will.

5 MADAME CLERK: Thank you. You may be seated.

6 THE COURT: Mr. Flores, you may address the jury in
7 your opening statement.

8 MR. FLORES: Thank you, Your Honor. May it please the
9 Court. Good afternoon, ladies and gentlemen. My name is
10 Lloyd Flores as I introduced myself earlier to you this
11 morning in voir dire. I'm employed by the Office of the
12 Attorney General.

13 Today's case is about the protection of the citizens of
14 Greenville County in the State of South Carolina. We are
15 here pursuant to the Sexually Violent Predator Act as Judge
16 Welmaker mentioned earlier. It's Title 48 of our State Code
17 of Laws.

18 The State believes that Mr. Calvin John Yawn, who's
19 seated at counsel table with his attorney, is a sexually
20 violent predator. Now before I talk about this case I do
21 want to give at least a best to disclaim it.

22 As the name of the Act entails, the Sexually Violent
23 Predator Act, these cases are not very pretty. You'll hear
24 things today that are not very pleasant. And you'll have to
25 decide an issue which is not very pleasant.

OPENING STATEMENTS - MR. FLORES

1 But we do come to you because this is a question of
2 fact. And as Judge Welmaker stated, you are the judges of
3 the facts in this case. You'll be asked at the end of the
4 case whether or not the State has proven beyond a reasonable
5 doubt that Mr. Calvin John Yawn is a sexually violent
6 predator.

7 Now this Act came about around fourteen years ago. Our
8 Legislators in Columbia decided they should pass this Act
9 for two reasons. The first was that they believed there was
10 a group of individuals within our State that suffered from
11 severe mental abnormalities or personality disorders that
12 made them more likely to commit acts of sexual violence if
13 they were not kept in a secure facility for control, care
14 and treatment.

15 The second reason was that they believed that this
16 treatment should take place in a secure facility to ensure
17 that the treatment -- to ensure that these individuals were
18 not in the community because they believe them to be
19 extremely dangerous. So those are the two reasons the
20 Legislature had on their mind when they passed this Act back
21 in 1998.

22 What is a sexual violent predator? The law requires
23 the Attorney General's Office, who represents the State in
24 this matter, to prove beyond a reasonable doubt that, one,
25 Mr. Calvin Yawn has committed an act -- has been convicted

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1 of an offense which is a sexually violent offense, which is
2 defined by statute. The second thing the State must prove
3 is that he suffers from a mental abnormality or personality
4 disorder that makes him more likely to commit -- to commit
5 these types of sexually violent offenses.

6 You will hear today that Mr. Yawn has, in fact, been
7 convicted of a sexually violent offense. In fact, Mr. Yawn
8 has been convicted of four type offenses, two in Anderson
9 County, two in Greenville County, but these acts took place
10 over a period of fifteen years, not individually, but two
11 convictions span a fifteen year time period. You will learn
12 the details about these acts. You will learn about the
13 victims that Mr. Yawn assaulted.

14 The second thing the State must prove in this case is
15 that he does indeed have a mental abnormality which will
16 make him more likely to do these things again in the future.
17 To that end, Dr. Marie Gehle, who is here, will testify
18 concerning her evaluation of Mr. Yawn, an evaluation that
19 took into account legal documents, that took into account
20 his interview, that took into account many other things that
21 other experts in her field rely upon in rendering opinions
22 in these matters.

23 You will hear that Mr. Yawn has been diagnosed with a
24 mental abnormality, pedophilia. Dr. Gehle will explain what
25 that is and how that affects his propensity or his

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1 likelihood to commit these types of acts in the future. You
2 will hear all this evidence and you will decide whether or
3 not you believe Mr. Yawn will, indeed, commit these acts
4 again.

5 I would ask that you just listen to all of the evidence
6 that's presented, whether it be from the State in the form
7 of Petitioner today or from the Respondent. We believe
8 after you've heard the facts of this case you will render a
9 verdict that Mr. Calvin John Yawn is a sexually violent
10 predator beyond a reasonable doubt and that he needs long-
11 term control -- control, care and treatment at a secure
12 facility at the Department of Mental Health. Thank you.

13 **MS. WIYGUL:** Thomas Jefferson said the natural progress
14 of things is for liberty to yield and the Government to gain
15 ground. That's exactly what's happened.

16 When I went out to lunch I had this sitting on my
17 windshield wiper. They don't put them on State issued cars.
18 They're just for citizens. I'll go back to my office, I'm
19 going to pay the ticket, and it'll be done with because
20 that's what it says on the back of the ticket, pay it, it'll
21 be done with.

22 Mr. Yawn pled guilty in General Sessions Court. Mr.
23 Yawn went to prison. He thought it was done with. He
24 thought he'd paid his debt to society and he could move on
25 with his life. But the Government has decided that it's not

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1 enough.

2 Mr. Flores told you that the General Assembly passed
3 this Act because they felt like certain individuals needed
4 extra treatment. That's important, the treatment.

5 Treatment is available on the outside of the prison system.

6 You'll hear that Mr. Yawn was never offered any kind of
7 treatment while he was in prison.

8 You'll hear that he has somewhere to live. He has a
9 supportive family. They've made plans for the treatment.

10 This isn't about the treatment. It's about locking somebody
11 up for longer than a judge sentenced them for.

12 I urge you just like Mr. Flores did, to listen to all
13 the evidence in this case, to think about action,
14 consequences for action, but there should be an end to it.

15 Thank you.

16 THE COURT: Mr. Flores, you may call your first
17 witness.

18 MR. FLORES: Thank you, Your Honor. The State would
19 call Dr. Marie Gehle.

20 MADAME CLERK: Place your left hand on the Bible and
21 raise your right hand, please.

22 Marie E. Gehle, being
23 duly sworn testified as follows:

24 MADAME CLERK: Please state your name for the record.

25 DR. GEHLE: It's Marie Gehle, G-e-h-l-e.

MARIE E. GEHLE - DIRECT EXAMINATION BY MR. FLORES

1 MADAME CLERK: Thank you.

2 Direct Examination by Mr. Flores:

3 Q. Good afternoon, Dr. Gehle.

4 A. Good afternoon.

5 Q. Please describe how you are currently employed.

6 A. I am a chief psychologist with the Department of Mental
7 Health. And I work for the forensic evaluation service,
8 Department of Mental Health.

9 Q. As part of that employment what are you asked to do?

10 A. I would do evaluations of sexually violent predators,
11 both pre-commitment and annual review or annual review
12 evaluations for people who are already committed to the
13 Program.

14 Q. Could you describe for the jury what professional
15 degrees you possess?

16 A. I have a bachelor's in psychology from Ohio Northern
17 University. I have a master's in clinical psychology from
18 Xavier University and a doctor of psychology from Xavier
19 University.

20 Q. Could you briefly discuss what the study of psychology
21 is for the jury?

22 A. Psychology is just the study of behavior and the mind.

23 Q. Have you had any specialized training in the field of
24 psychology?

25 A. Plenty of training. I have -- I did several practicums

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1 during graduate school. I worked as a researcher during
2 graduate school. I did an internship in Washington State.
3 And part of that year was spent in the Sexually Violent
4 Predator Program in Washington State. And then I did a post
5 doctoral fellowship in forensic psychology in Georgia.

6 Q. Doctor, what is the field of forensic psychology?

7 A. It's just the application of psychological principals
8 in science to questions pertaining to the courts and the
9 law.

10 Q. Questions as the ones we are asking you ---

11 A. Correct.

12 Q. --- here today? Doctor, have you previously been
13 recognized and testified as an expert witness in the fields
14 of forensic psychology here in the courts of law in this
15 State?

16 A. Yes, I have.

17 Q. And have those times that you've testified, have they
18 been pursuant to the Sexually Violent Predator Act?

19 A. Yes, they have.

20 Q. About how many times have you been so recognized as an
21 expert?

22 A. About seventeen, eighteen times.

23 Q. Now you discussed with the jury that you've done both
24 pre-commitment and what are considered annual review type
25 evaluations. Concerning the pre-commitment type

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1 evaluations, about how many of those evaluations have you
2 conducted?

3 A. I've completed eleven reports. I still have a bunch of
4 reports on my desk to write. But eleven reports completed.

5 Q. And of those eleven completed reports how many of those
6 individuals did you recommend for commitment to the Program?

7 A. Five.

8 Q. Five. And about how many do you have left to continue?

9 A. Twelve, but six reports to finish right now.

10 MR. FLORES: Your Honor, at this time we would ask that
11 Dr. Gehle be recognized in the field of forensic psychology
12 as an expert.

13 THE COURT: Any voir dire or any objection?

14 MS. WIYGUL: Without objection, Your Honor.

15 THE COURT: Without objection, this witness will be
16 considered an expert in the field of forensic psychology.

17 Ladies and gentlemen of the jury, just let me briefly
18 explain to you about an expert. Normally a witness can
19 testify as to what he or she experiences, either what they
20 saw, or heard, or felt, or tasted, or sensed in some way,
21 but we have an exception for experts who are qualified in
22 some field of expertise.

23 Because of their education and experience they're
24 allowed to give opinions. Most folks can't give opinions.
25 This witness has been qualified in the field of forensic

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1 psychology. She'll be allowed to give testimony in that
2 area, can give opinions and the basis of those opinions.

3 But let me remind you that this is evidence like all
4 other evidence. The fact that a person is allowed to give
5 an opinion as an expert doesn't mean you have to accept that
6 opinion or the basis of that opinion. It's evidence for you
7 to use in any way that you see fit as all evidence is. All
8 right. Mr. Flores, you may continue.

9 MR. FLORES: Thank you, Your Honor.

10 Direct Examination by Mr. Flores Continued:

11 Q. Dr. Gehle, how did you become involved with this
12 particular case?

13 A. I received an order from the court to do this
14 evaluation.

15 Q. And as the court appointed evaluator in this case were
16 -- did you receive any compensation, any additional pay for
17 performing this evaluation?

18 A. No, this is just part of my regular duties with the
19 Department of Mental Health.

20 Q. As part of your evaluation did you meet and interview
21 Mr. Yawn?

22 A. Yes, I did.

23 Q. And is the man you met with here in the courtroom
24 today?

25 A. Yes, he is.

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1 Q. Would you identify him, please?

2 A. Sitting next to his attorney.

3 MR. FLORES: Your Honor, we would just ask the record
4 reflect that Dr. Gehle did identify Mr. Yawn.

5 THE COURT: It so reflects, it's correct
6 identification.

7 MR. FLORES: Thank you, Your Honor.

8 Q. Doctor, when you are ordered by the court to perform an
9 evaluation in these cases what are you asked to do?

10 A. I'm asked to render an opinion as to whether the person
11 meets the criteria to be considered a sexually violent
12 predator.

13 Q. And as part of rendering your opinion in these matters
14 what -- can you describe for the jury what your protocol is,
15 what you do to reach an opinion?

16 A. Sure. First off I get the order. And I usually get a
17 bunch of records that come with that. They come from the
18 Attorney General's Office as part of a petition that's filed
19 in the courts pursuant to this Act. I get records from the
20 Department of Corrections and the records that were reviewed
21 by the multi-disciplinary team.

22 I go through those records and I identify any gaps or
23 anything that's missing, and I request all those records.
24 We do a search of the Department of Mental Health to see if
25 that -- to see if the Respondent is in our database to see

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1 if they've seen any mental health providers in the community
2 associated with the Department of Mental Health or if
3 they've been hospitalized. And I'll get those records.

4 I read through everything and I come up with additional
5 interview questions. I typically have an interview protocol
6 that I follow, but I'll add any additional questions based
7 on the information that I review.

8 I'll schedule an interview. And the -- Mr. Yawn came
9 to the Department of Mental Health. And I sat down and
10 talked to him and asked him questions.

11 And I sit down with all that information and start to
12 write a report. I take a considerable time to think about
13 the factors that I'm asked to give an opinion about, whether
14 the person has a diagnosis, what their risk level is.

15 I also consult with some colleagues who specialize in
16 this area. And I'll ask any questions or I'll present the
17 case and see if they have any feedback or if they're
18 thinking about the case differently than I do. But I sit
19 down -- after all that goes on I sit down and complete my
20 report, and then I submit it to the court.

21 Q. And you did everything that you've just described for
22 the jury? You did all that in this case?

23 A. Correct.

24 Q. Doctor, on how many occasions did you sit down and talk
25 with Mr. Yawn?

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1 A. I met with him on one occasion.

2 Q. And for about how long?

3 A. About two and a half hours.

4 Q. Is that typical of these types of evaluations?

5 A. It varies depending on the number of offenses that are
6 needed to review and depending on the individual. That can
7 be typical.

8 Q. You were describing for the court that you received
9 information in this case, medical records, information from
10 the Attorney General's Office. You did so in this case, you
11 received that type of information?

12 A. Correct.

13 Q. Is this information that you described the type of
14 information that is typically and reasonably relied upon by
15 other experts in your field?

16 A. Yes, it is.

17 Q. At the time you conducted your interview and evaluation
18 of Mr. Yawn was there any information you could not obtain?

19 A. I did request records from a Sonny Thielman
20 (phonetics), a sex offender therapist who reportedly treated
21 Mr. Yawn. And I received notice that the records were no
22 longer available.

23 Q. Did the lack of this information -- did that affect
24 your ability to render an opinion in this matter?

25 A. No.

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1 Q. Doctor, why did you rely on information regarding Mr.
2 Yawn's criminal history in reaching your opinion in this
3 matter?

4 A. Looking at the criminal history is really important.
5 It helps me understand the Respondent's history in general
6 and their history of sexual offending. I look for patterns
7 and the victim type or the sexual acts 'cause that may
8 indicate a mental abnormality or personality disorder.
9 That's part of what my opinion is based on.

10 I look for a history of sanctions and if there was
11 offending after sanctions, if there was court ordered
12 treatment and offending after they've completed court
13 ordered treatment. I read through all the witness
14 statements and the Respondent's statements. That helps me
15 formulate the interview questions.

16 And then when I sit down and interview the person it
17 also helps me to see if their story's consistent or are they
18 reporting to me the same thing that the victim reporting --
19 reported. Are they reporting the same thing that they
20 reported previously to the police if they were questioned?
21 And it also helps me score an actuarial measure.

22 Q. We'll get through all that information in just a
23 moment. That's a lot of information, doctor. But let's
24 start here. At the time of your interview of what did --
25 what had Mr. Yawn been convicted?

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1 A. He's been convicted of four counts of lewd act upon a
2 child under age sixteen.

3 Q. And based upon your knowledge is this offense
4 considered a sexually violent offense?

5 A. Yes, they are by statute.

6 MR. FLORES: Your Honor, may I approach the witness?

7 THE COURT: You may, sir.

8 MR. FLORES: Thank you.

9 Q. Doctor, I'm handing you two sets of documents. One is
10 labeled Plaintiff's exhibit 1 and the other is Plaintiff's
11 exhibit 2. Would you please review these documents.

12 (Pause)

13 Q. Doctor, have you seen these documents before?

14 A. Yes, I have.

15 Q. And concerning Plaintiff's exhibit 1 what is that a set
16 of documents of?

17 A. The first thing is an indictment for a lewd act upon a
18 child under sixteen. And the specifics of the indictment --
19 would you like me to go into that?

20 Q. Well, let's just identify what ---

21 A. Okay.

22 Q. --- it is first of all.

23 A. Then there is a sentencing sheet for the lewd act, and
24 finally an arrest warrant for the lewd act.

25 Q. All right. And you've just said that you've seen these

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1 documents before. Were these part of the basis of your
2 opinion?

3 A. Yes.

4 Q. And these are the type of documents that are reasonably
5 and typically relied upon by other experts in your field?

6 A. Yes, they are.

7 Q. How do you know that these documents, these specific
8 documents in Plaintiff's exhibit 1 are what they portray to
9 be?

10 A. Well, they're stamped true copy. And they are signed
11 by the Clerk of Court.

12 Q. And which County are they from?

13 A. This first batch is from Anderson County.

14 Q. And could you please describe what's in Plaintiff's
15 exhibit number 2?

16 A. Yes. It's an indictment for a lewd act upon a child
17 under sixteen, the specifics of the indictment for that
18 charge, then the sentencing sheet and the arrest warrant.

19 Q. And again, is this the type of document that's
20 typically and reasonably relied upon by other experts in
21 your field?

22 A. Yes.

23 Q. And you, indeed, relied upon this -- these documents in
24 rendering your opinion in this matter?

25 A. Yes.

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1 Q. Could you describe for the jury what the offenses were
2 that are contained in these documents?

3 A. These are the documents from Anderson County. From my
4 review of the incident reports this is -- he was charged --
5 Mr. Yawn was charged with a lewd act upon a child under age
6 sixteen.

7 One occurred or he was charged in 2002. But one
8 occurred in 1995. And then the second occurred in 2000.
9 That's when the child said that they occurred. And this
10 happened against the same child. He was five years old in
11 1995 at the time of the first offense. And he was nine
12 years old in 2000 at the time of the second offense.

13 This child reported that in 1995 while he was playing a
14 computer game at his home Mr. Yawn came into the room,
15 reached over his shoulders and put his hand in the boy's
16 pants and fondled the boy's penis. The boy said that he
17 told Mr. Yawn or he said that Mr. Yawn started flipping it
18 around and going up and down on his penis. The boy told Mr.
19 Yawn to get off him, and Mr. Yawn told the boy not to tell
20 anyone.

21 The boy did report to his grandmother and father what
22 happened shortly after this in 1995. And from the father's
23 account it's apparent that they told Mr. Yawn what the boy
24 reported and then they asked Mr. Yawn to come over and they
25 would all speak to the boy. So they all apparently

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1 confronted him, this five year old child.

2 So when the boy was confronted he began crying, and he
3 ran out of the room and hid under the bed. And then he
4 ultimately recanted his statement.

5 And the boy didn't say much about that incident until
6 he found out that his brother reported something similar
7 that Mr. Yawn had done. So his brother reported that Mr.
8 Yawn had also fondled him.

9 At that time the first victim, who was now nine years
10 old, he reported that he was at the lake with Mr. Yawn, and
11 his dad, and his brother, and another kid and Mr. Yawn came
12 up to him, started tickling him and then put his hand inside
13 his bathing suit, touched his penis and started jerking his
14 penis back and forth. The boy reported that he hit Mr. Yawn
15 and then got away from him.

16 Mr. Yawn told him not to tell anyone or his father
17 would be very upset with him and that Mr. Yawn would hurt
18 him if he told. That's what the victim reported.

19 Q. As a result of these offenses did Mr. Yawn go to trial
20 or plead guilty?

21 A. He pled guilty.

22 Q. And is that noted on the sentencing sheet?

23 A. Yes.

24 Q. On both counts, is that correct?

25 A. Correct.

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1 Q. What date did Mr. Yawn enter that plea?

2 A. It looks like it was -- I'm sorry.

3 Q. It's found at the bottom of the page.

4 A. Okay. The sentence date is 2/14/2003.

5 Q. So he pled guilty to those acts in 2003. What sentence
6 did he receive according to the sentencing sheet?

7 A. He received a term of eight years suspended to the
8 service -- suspended to ninety days incarceration and five
9 years probation.

10 Q. Were there any other conditions that were set upon that
11 sentence?

12 A. It says defendant to attend sex offender counseling and
13 complete sex offender counseling. And there are some things
14 that I can't quite make out. It's something from being
15 around children under eight unless accompanied by an adult.

16 Q. And you said that this information was part of the
17 basis of your opinion in this matter, is that correct?

18 A. Correct.

19 MR. FLORES: Your Honor, we would move Plaintiff's
20 exhibits 1 and 2 into evidence at this time.

21 THE COURT: Any objection?

22 MS. WIYGUL: Without objection.

23 THE COURT: Without objection, exhibit 1 and 2 are
24 admitted into evidence and may be published to the jury.

25 (Whereupon Plaintiff's exhibits 1 and 2 were admitted

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1 into evidence)

2 MR. FLORES: Thank you, Your Honor.

3 Q. Dr. Gehle, you've testified that as part of his
4 sentence to these crimes in 2003 he was ordered to undergo
5 sex offender treatment.

6 A. Correct.

7 Q. What did you learn about Mr. Yawn's involvement in sex
8 offender treatment?

9 A. Well, I didn't get those records, but I did ask Mr.
10 Yawn about it when I interviewed him. And I can tell you
11 what he said. Let me just find that spot in my report.

12 This would be a quote. He said I learned not to be
13 looking for a woman more than five years younger or five
14 years older, try to keep yourself out of situations that
15 look bad, don't hang out at places where children
16 congregate, don't go to Wal-Mart until late at night.

17 I learned that anywhere I went, don't go by myself.
18 It's hard to explain, for five or six months after my
19 convictions I was scared to step out the door without
20 someone with me. I was depressed for a while because of it.
21 I wasn't free to go where I wanted. My mom said, quote,
22 look, you need to snap out of it. That was what he said.

23 Q. So based upon your conversation with him he did,
24 indeed, go to sex offender treatment, is that correct?

25 A. Yes.

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1 Q. But you didn't have those records?

2 A. I did not have those records.

3 Q. But you requested those records, correct?

4 A. I requested those records. And because they've been so
5 long, I'm guessing that's why, because of the time-frame,
6 they were unavailable.

7 Q. Now, doctor, you've mentioned that Mr. Yawn was
8 convicted of four different sexually violent offenses. And
9 you've described two of those for the jury. I'm going to
10 hand you what's been marked as Plaintiff's exhibit 4 for
11 identification purposes.

12 A. Okay.

13 Q. Would you take a look at this. Please just review it.

14 (Pause)

15 Q. Now, doctor, have you seen these documents before?

16 A. Yes, I have.

17 Q. And were these documents -- could you, please, just
18 briefly describe what they are?

19 A. Yes. This is an indictment for a lewd act upon a
20 child, an indictment with the details for a lewd act upon a
21 child, a sentencing sheet and the arrest warrant.

22 Q. Could you tell the jury about this particular act?

23 A. Yes. Just make sure I'm looking at the right thing
24 here. Okay. This is an indictment for a lewd act upon a
25 child that occurred on or about March 19th, 2009. And

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1 according -- according to the information that I reviewed he
2 fondled the -- Mr. Yawn fondled the genitals of an eight
3 year old male.

4 The victim was the friend of his step-daughter. And
5 the victim, the eight year old boy was over at his house
6 playing video games with his step-daughter. Mr. Yawn
7 offered to walk the boy home.

8 And while walking he asked the boy about, and I quote,
9 a cup he was wearing, which was part of his baseball
10 uniform. The victim stated that when they arrived at his
11 home, so on the doorstep of the boy's home, Mr. Yawn asked
12 if he could touch the cup the little boy was wearing.

13 The boy said, no, but Mr. Yawn put his hand inside the
14 boy's pants, touched the cup, then reached inside the cup
15 and touched the boy's penis. Mr. Yawn pulled his hand out
16 and left, and the boy immediately reported the incident to
17 his mother.

18 Q. Doctor, was this information that you just described
19 the type of information that's reasonably relied upon by
20 other experts in your field?

21 A. Yes, it is.

22 Q. And was it part of the basis of your opinion in this
23 matter?

24 A. Yes, it is.

25 Q. Now according to the sentencing sheet in this case did

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1 Mr. Yawn go to trial or did he plead guilty?

2 A. He pled guilty.

3 Q. And what was the sentence that he received?

4 A. Ten years suspended or given time served. So ten years
5 suspended to time served and five years probation.

6 Q. And how much credit of time served did he receive?

7 A. Four hundred and seventy-nine days.

8 MR. FLORES: Your Honor, we would move Plaintiff's
9 exhibit 4 into evidence at this time.

10 MS. WIYGUL: Without objection.

11 THE COURT: Without objection, exhibit 4 may be
12 admitted into evidence and may be published.

13 (Whereupon Plaintiff's exhibit 4 was admitted into
14 evidence)

15 MR. FLORES: Your Honor, may I approach the witness?

16 THE COURT: You may do so.

17 MR. FLORES: Thank you, Your Honor.

18 Q. Doctor, I'm going to hand you another set of documents.
19 This is labeled Plaintiff's exhibit number 3. If you would,
20 please, review those documents.

21 (Pause)

22 Q. Have you reviewed these documents before?

23 A. Yes, I have.

24 Q. And could you describe for the jury what these
25 documents are?

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1 A. Yes. It is an indictment for a lewd act upon a child.
2 The details of that indictment, a sentencing sheet and an
3 arrest warrant.

4 Q. And what did you learn about this offense?

5 A. Okay. From my understanding when the officers or when
6 the eight year old boy from the last offense, when he
7 reported this to the authorities the police did an
8 investigation and another victim came forward. And this
9 victim was his wife's nephew from my understanding. And
10 this boy was also eight years old.

11 And according to the information I reviewed, it said
12 that Mr. Yawn between January 1, 2009 and April 30th, 2009,
13 that he fondled the penis of an eight year old boy who was
14 visiting his home. The victim was the nephew of his wife.

15 And the victim reported that he bathed, took showers
16 with Mr. Yawn on several occasions. And this was reportedly
17 to save water. And the boy reported that Mr. Yawn fondled
18 his penis on at least two occasions.

19 The victim's mother stated that she was aware that her
20 son had bathed with Mr. Yawn on several occasions. And she
21 was also aware that he was a registered sex offender. But
22 she told officers that Mr. Yawn had told the family that he
23 was required to register as a sex offender because he had
24 sex with an underage girl. And subsequently she did not
25 believe that he posed a risk to her son. So she allowed

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1 this to happen. And the boy reported that he fondled him.

2 Q. Based on your review of the records and everything
3 you've had in this case did Mr. Yawn -- has Mr. Yawn ever
4 offended against a young girl?

5 A. Not to my knowledge. Four prepubescent male victims
6 are who came forward.

7 Q. And you relied upon this information found in
8 Plaintiff's exhibit 3 as part of the basis for your opinion?

9 A. Yes, I did.

10 Q. And some of the type that's typically reasonably relied
11 upon by other experts in your field?

12 A. Yes, it is.

13 MR. FLORES: Your Honor, we would move Plaintiff's
14 exhibit 3 into evidence at this time.

15 MS. WIYGUL: Without objection.

16 THE COURT: Exhibit 3 is admitted into evidence without
17 objection. It may be published.

18 MR. FLORES: Thank you, Your Honor.

19 (Whereupon Plaintiff's exhibit 3 was admitted into
20 evidence)

21 Q. Now, doctor, in describing these offenses in great
22 detail was this the only information you relied upon in
23 rendering your opinion in this matter?

24 A. No. I relied on all the information that I was given,
25 the interview with Mr. Yawn, his account of the offenses.

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1 That would be the information I relied upon.

2 Q. Doctor, you've testified that you've interviewed Mr.

3 Yawn.

4 A. Correct.

5 Q. Why did you interview him?

6 A. It's important to, you know, sit down with a person and
7 get their side of the story. I also look at their mental
8 status, their interaction style. That helps with diagnoses.

9 I look for, when he gives his account of the offenses,
10 inconsistencies between his current and past account and the
11 victim's account. That helps me with formulating questions.
12 I look at his plans for the future, his statements regarding
13 how he will avoid sexually offending in the future, his
14 statements regarding whether or not he thinks he needs
15 treatments. And in general, you know, I get a basic history
16 from them.

17 Q. Doctor, as part of that interview -- I'm sorry. You've
18 just said that you asked him about his plans for the future.

19 A. Correct.

20 Q. What information did he tell you during the interview
21 with regard to his plans for the future?

22 A. Mr. Yawn said that he plans to return living with his
23 wife and children. He and his wife have or his wife has
24 primary custody of her female child, who, I believe, is
25 around ten years old, give or take. They also have a two

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1 year old. And, I believe, that they just had a baby
2 recently. He said that he plans to return to a job that he
3 formerly had working as a mechanic at a car dealership.

4 He said he did not believe that he needed sex offender
5 treatment. He said that he -- when I asked him if he needed
6 sex offender treatment, and I quote, he said, honestly, no.
7 I feel I need to get out, get back to work, get back to my
8 wife and kids. He also said that he was not concerned with
9 sexually re-offending.

10 He said his long-term plans are to try to purchase a
11 piece of property, put a home in the middle of it and get
12 away with him, his wife and his kids. He further stated,
13 and I quote, he said Hanna, his ten year old step-daughter,
14 knows she can't have sleep-overs. Said, I'm going to have
15 the same problem with the younger two.

16 I asked him about whether, you know, not allowing
17 sleep-overs with his children or allowing his children to
18 have sleep-overs was adequate given his offenses weren't
19 exclusive to sleep-overs. And he said that that was the
20 only limit he was willing to place on his children. He
21 didn't want to deprive his child or his children of a social
22 life. And when I asked him how he would prevent sexual re-
23 offending, he said, I guess just trying to keep this in the
24 back of my head, reminding myself about prison.

25 Q. Were these statements that Mr. Yawn made, were they

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1 significant with regard to your opinion in this case?

2 A. Yes.

3 Q. Why so?

4 A. To me it sounds like, I mean, he doesn't think that he
5 needs treatment. He's denying the offenses. He's
6 minimizing the offenses.

7 And I don't really hear a good relapse prevention plan
8 as far as just keeping in the back of his mind that he's
9 going to, you know, think about going to prison again. He's
10 been sanctioned by the courts before and that didn't stop
11 him from re-offending. So I don't know that that is a
12 viable solution.

13 Q. Was this information part of the basis of your opinion?

14 A. Yes.

15 Q. Was it the sole basis for your opinion?

16 A. No.

17 Q. Doctor, you mentioned as part of your protocol in these
18 cases, you mentioned assessments or an actuarial instrument?

19 A. Correct.

20 Q. Now what actuarial instrument or assessment did you
21 perform in this case?

22 A. I performed the Static-99R.

23 Q. Could you explain what this instrument is?

24 A. Yes. The Static-99R is an actuarial measure, meaning
25 that it is a mechanical tool. If you think about somebody

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1 who's had a heart attack, you might be able to go to your
2 doctor and you can tell your doctor certain things that are
3 going on with you, and he can maybe give you an estimate of
4 what your chances are of having another heart attack.

5 So if you have had cholesterol, if you don't exercise,
6 if you eat a lot of red meat, if you smoke, if you drink, if
7 you have a family history of heart attack, you're probably
8 going to have a higher estimate of having another heart
9 attack. That's kind of a basic premise of this actuarial.

10 We look at the number of risk factors you have and
11 compare that to a group of individuals who have the same
12 number of risk factors and get an estimate of how many of
13 those individuals have sexually re-offended. So it's a
14 comparison.

15 Q. Is it always a perfect fit?

16 A. No.

17 Q. But it is one piece of information you use in your
18 diagnosis and your opinion, is that correct?

19 A. It's one piece of information that I use in my opinion
20 to help estimate the risk of this particular individual
21 relative to other sex offenders. It is the most widely used
22 actuarial instrument. And actuarial instruments improve the
23 opinions that experts offer to the courts.

24 Q. When Mr. Yawn was assessed with this instrument, what
25 information did that instrument reveal?

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1 A. Well, his risk to re-offend is considered moderately
2 high compared to other individuals with the same score he
3 has. Roughly nineteen point six (19.6) percent of those sex
4 offenders recidivated within five years. And over twenty-
5 seven percent recidivated within ten years. So they
6 committed or were charged with another sexual offense within
7 ten years.

8 And his score -- he -- there's about -- if I look at
9 his score, about ten percent of the sample had scores
10 associated with more risk than him. But eighty-one percent
11 had scores associated with less risk. So ...

12 Q. And was this information you gained from the Static-
13 99R, was that part of the basis of your opinion?

14 A. Yes, it was.

15 Q. Was it the only basis for your opinion?

16 A. No.

17 Q. Doctor, you've talked about the static risk factors.
18 What are risk factors? Could you explain what that concept
19 is for the jury?

20 A. Well, the static risk factors used in this assessment
21 have been statistically shown to be associated with sexual
22 offense. So what they do is they take a very large group of
23 individuals and they look at -- they, you know, separate
24 them in two groups, people who have not re-offended and
25 people who have re-offended. And they look at what factors

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1 differentiate these two groups. Those are the risk factors
2 that are included in this assessment.

3 Q. Did you consider other risk factors?

4 A. I also looked at some dynamic risk factors that have
5 been statistically shown to be associated with sexual
6 recidivism.

7 Q. Did Mr. Yawn have any of these dynamic risk factors?

8 A. Yes, he did. Probably the primarily -- primary one is
9 he has deviant sexual interests in that they -- sexual
10 arousal to prepubescent boys, boys who have not sexually
11 developed.

12 And he appears to have some emotional congruence with
13 children. He spent a lot of time with children before he
14 had children of his own. So when there was really no need
15 for him to spend time with children, he was spending time
16 with this neighbor -- with the two little boys with whom he
17 was accused of offending.

18 That emotional congruence indicates that he may prefer
19 relationships with children to that of adults and that that
20 might be easier or more comfortable for him. He also had
21 two possible dynamic risk factors. And that was he had few
22 intimate relationships prior to age thirty-five, intimate
23 relationships with adults and that emotional congruence to
24 children.

25 Q. Were these risk factors part of the basis of your

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1 opinion?

2 A. Yes, they were.

3 Q. And these are the types of risk factors that other
4 individuals in your field reasonably rely upon in rendering
5 opinions in these matters?

6 A. Yes.

7 Q. Doctor, was there any other information upon which you
8 relied in rendering your opinion regarding Mr. Yawn?

9 A. Well, I certainly considered his diagnosis if he had
10 one.

11 Q. Now speaking of that, based on your examination of Mr.
12 Yawn, on the records we've been discussing, these factors,
13 the actuarial instrument, did you render an opinion to a
14 reasonable degree of psychological certainty as to whether
15 Mr. Yawn has a mental abnormality?

16 A. Yes.

17 Q. And what was that opinion?

18 A. My opinion is that he meets the criteria for a
19 diagnosis of pedophilia, sexually attracted to males, non-
20 exclusive type.

21 Q. All right. Could you tell the jury what pedophilia is?

22 A. Pedophilia is sexual arousal, urges, fantasies or
23 behaviors to prepubescent children, meaning children who
24 have not sexually matured.

25 Q. You said he is sexually attracted to males. What does

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1 that mean?

2 A. Well, his known victims have all been males. So it
3 appears that he is sexually attracted to prepubescent males.
4 And then the non-exclusive type, that just means that he's
5 not exclusively attracted to children because he also has --
6 he has an adult sexual relationship with his wife.

7 Q. Is pedophilia considered a life-long condition?

8 A. Yes, it is.

9 Q. Doctor, based on all the information you've just
10 described for the jury, including the information you
11 learned during your interviews with Mr. Yawn, at this time
12 do you have an opinion to a reasonable degree of
13 psychological certainty as to whether Mr. Yawn's pedophilia
14 affects his emotional or volitional capacity so that he is
15 predisposed to commit future sexually violent offenses?

16 A. Yes, I do.

17 Q. And what is that opinion?

18 A. My opinion is that it does.

19 Q. And upon what do you rely to determine whether Mr. Yawn
20 has the ability to control his pedophilia?

21 A. Well, I look at his history of offenses. He's offended
22 after he's been in trouble. He offended against children
23 who could readily identify him, meaning that's a riskier
24 situation. He offended in places that carry a high risk of
25 being detected, on the doorstep of the child's home, in a

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1 child's home, after being confronted by a child's parent.

2 The lake incident involved offending a child within
3 close proximity of that child's parent. And he allegedly
4 lied to his family about the reasons he was on the sex
5 offender registry. And that allowed him continued access to
6 his preferred victims. Those things suggest that he has
7 considerable difficulty controlling his sexual behavior.
8 Despite the consequences, he offends anyways.

9 Q. Doctor, do you have an opinion to a reasonable degree
10 of psychological certainty as to whether Mr. Yawn has the
11 propensity to be dangerous and to commit future sexually
12 violent offenses?

13 A. I do.

14 Q. And what is that opinion?

15 A. That he does.

16 Q. Doctor, do you have an opinion to a reasonable degree
17 of psychological certainty as to whether Mr. Yawn's
18 propensity to commit future sexually violent offenses is of
19 such a degree that it poses a menace to the health and
20 safety of others?

21 A. Yes.

22 Q. And what is that opinion?

23 A. That it does.

24 Q. Can you explain to the jury why you believe his
25 propensity to commit future sexually violent offenses is of

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1 such a degree that it poses a menace to the health and
2 safety of others?

3 A. Well, several factors. For one, he meets the criteria
4 for pedophilia, which is a life-long condition that
5 inherently indicates that people have difficulty controlling
6 their sexual behaviors. He -- he's a moderately high risk
7 according to the actuarial measure. He offended after
8 sanctions. And he offended after a course of sex offender
9 treatment. And he has, I think, little interest in
10 treatment in the community.

11 Q. Doctor, do you have an opinion to a reasonable degree
12 of psychological certainty as to whether Mr. Yawn has
13 serious difficulty in controlling his, excuse me, in
14 controlling his behavior and his propensities to be
15 dangerous?

16 A. Yes.

17 Q. And what is that opinion?

18 A. That he does.

19 Q. Doctor, do you have an opinion to a reasonable degree
20 of psychological certainty whether Mr. Yawn's pedophilia
21 makes him likely to engage in acts of sexual violence if he
22 is not confined in a secure facility for long-term control,
23 care and treatment?

24 A. Yes.

25 Q. And what is that opinion?

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1 A. That it does.

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

6 A. Yes.

7 Q. And what is that opinion?

8 A. It is my opinion that he does meet the criteria.

9 MR. FLORES: I beg the Court's indulgence.

10 (Pause)

11 MR. FLORES: Your Honor, that's all the questions we
12 have at this time.

13 THE COURT: All right. Ms. Wiygul, you may cross
14 examine the witness.

15 Cross Examination by Ms. Wiygul:

16 Q. Dr. Gehle, do you still have those exhibits up there?

17 A. Yes, I do.

18 Q. Could you look at the bottom of exhibits 1 and 2, the
19 bottom of the sentencing sheet?

20 A. Okay.

21 Q. Does that say that the ninety days Mr. Yawn was
22 sentenced to may be served on weekends? I believe it's
23 clearer on indictment ---

24 A. I can read it on this one. Yes. It says time may be
25 served on weekends.

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1 Q. Okay. So he got ninety days weekend time?

2 A. Yes, that's my understanding.

3 Q. And on his second set -- and that would be exhibits 3
4 and 4, he got time served, correct? And concurrent
5 sentences.

6 A. Well, I don't think that's correct. On 3 he got three
7 years. He was given credit for four hundred and ninety-six
8 days time served.

9 Q. Um-hum (affirmative).

10 A. And on exhibit 4 he was given ten years and credit for
11 four hundred and seventy-nine days.

12 Q. And on exhibit 4 that was actually ten years hanging
13 over his head, but an active sentence of time served,
14 correct? That ten years was suspended ---

15 A. Yes.

16 Q. --- upon time served?

17 A. Yes. Yes, correct.

18 Q. So he got ninety days weekend time and time served,
19 active sentences, correct?

20 A. Yes.

21 Q. Okay. What colleagues did you consult with before
22 preparing Mr. Yawn's report?

23 A. I don't know specifically if everybody was at the
24 meeting, but typically I consult with my colleagues at the
25 Department of Mental Health. There are ---

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1 Q. Why didn't you include that information in your report?

2 A. It's something that we do pretty informally.

3 Q. Y'all just sit around and chat?

4 A. We have a weekly meeting.

5 Q. Okay. And who was present at the meeting regarding Mr.

6 Yawn's report?

7 A. I'm not sure specifically everybody that was available,
8 but, you know, I could probably guess.

9 Q. Just other people that worked at the Department of
10 Mental Health?

11 A. No, it's people who do these evaluations. There's a
12 group of us who meet weekly. And, you know, sometimes
13 they're not all there for if they have an evaluation or if
14 there's something like that going on. But there is --
15 typically there are five of us.

16 Q. Okay. Could you clarify your title for us?

17 A. Yes. I'm a chief psychologist.

18 Q. You're the Chief Psychologist of the Sexually Violent
19 Predator Program in South Carolina?

20 A. I'm a chief psychologist. That's the State title used
21 for a licensed clinical psychologist.

22 Q. Okay. And so you're not a medical doctor?

23 A. I'm not a medical doctor.

24 Q. You can't write prescriptions?

25 A. Nope.

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1 Q. Okay. And you're also employed by the State of Georgia
2 doing the same thing, correct?

3 A. I'm employed by the State of Georgia. I do forensic
4 evaluations there, criminal responsibility and competency to
5 stand trial.

6 Q. Okay. Do you live in South Carolina or in Georgia?

7 A. I live in Georgia.

8 Q. Okay. As a chief psychologist with the Sexually
9 Violent Predator Program in South Carolina are you familiar
10 with the yearly CMHS block grant application, which is
11 submitted yearly to the Federal Government?

12 A. No, I'm not.

13 Q. Okay. So you're not involved in those meetings?

14 A. No.

15 Q. And you stated you don't receive any additional funds.
16 What is your annual salary from the State of South Carolina?

17 A. I'm paid seventy thousand dollars a year.

18 Q. You stated earlier that Mr. Yawn came to Mental Health
19 for his interview, is that right?

20 A. He came to the Department of Mental Health to the
21 forensic evaluation service.

22 Q. Okay. But he didn't just drive himself down, did he?

23 A. No.

24 Q. Because he's actually being held in custody until this
25 trial was held, correct?

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1 A. Correct.

2 Q. And that's pursuant to the Act, not pursuant to any
3 criminal sentence, correct?

4 A. Correct.

5 Q. What day was Mr. Yawn supposed to be released from the
6 Department of Corrections? What day was his sentence over?

7 A. It says that his max-out date was July 24th, 2011.

8 Q. And regarding -- regarding Petitioner's exhibit 4,
9 indictment 4508 ...

10 A. Indictment ...

11 Q. It's exhibit 4.

12 A. And where is that number at?

13 Q. On the ---

14 A. Oh.

15 Q. --- front. On the little sticker.

16 A. Okay.

17 Q. Okay. You stated he pled guilty to that. But you got
18 all of the records concerning that charge, correct?

19 A. I believe so.

20 Q. Did you review the transcript from the jury trial that
21 was held in that case that resulted in a mistrial?

22 A. No, I did not.

23 Q. Dr. Gehle, what treatment would you recommend for a
24 gentleman in Mr. Yawn's position? Just in general, out on
25 the street, someone comes to you seeking treatment, what

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1 treatment would you recommend?

2 A. I don't necessarily make treatment recommendations.

3 But in this case right now Mr. Yawn is denying that he
4 committed any offenses. So I don't know that he'd benefit
5 from treatment.

6 Q. So you don't believe he'd benefit from treatment?

7 A. I don't know that he would.

8 Q. Okay.

9 A. At this time.

10 Q. Okay. So -- that's okay, doctor. Did you speak with
11 the doctor that previously provided him sex offender
12 treatment or the psychologist?

13 A. No, I did not.

14 Q. Did you speak with anyone about this case since you did
15 this evaluation back in August of last year?

16 A. Did I speak to anybody about this case?

17 Q. Yeah. Did you speak with Mr. Yawn's sister? Did you
18 speak with Mr. Yawn again? Did you speak with any of his
19 family members? Did you ---

20 A. No.

21 Q. Did you speak with any of the people that saw him down
22 at the Department of Corrections?

23 A. No.

24 Q. Did Mr. Yawn have any disciplinary infractions while he
25 was in custody?

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1 A. I don't believe that he did.

2 Q. And Mr. Yawn doesn't suffer from any type of
3 personality disorder, does he?

4 A. Not that I could diagnose, no.

5 Q. What's the yearly average cost of a resident in this
6 Program?

7 MR. FLORES: Objection, Your Honor, relevance.

8 THE COURT: What's the relevance of that?

9 MS. WIYGUL: Your Honor, just she's stating he would
10 not benefit from treatment, yet she wants to commit him to
11 this Program for treatment. So I'm trying to figure out
12 what is available that she wants him to get there.

13 THE COURT: Overrule your objection, Mr. Flores.

14 MR. FLORES: Thank you, Your Honor.

15 Q. What's the yearly cost of a resident at the Sexually
16 Violent Predator Program?

17 A. I don't know -- I'm going to guess at a number that I
18 reviewed recently, and that was about forty-five thousand
19 dollars. But I don't know specifically what it is. Forty-
20 five thousand dollars per resident per year.

21 Q. Dr. Gehle, just one moment, please.

22 (Pause)

23 Q. I'm going to show you what's been previously marked as
24 Respondent's 5.

25 A. Okay.

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1 Q. Could you identify this?

2 A. Okay. It's ---

3 MR. FLORES: Your Honor, I think we have a matter to
4 take up outside the presence of the jury.

5 THE COURT: All right. Ladies and gentlemen, this
6 might be a good time for you to take a short break. I'll
7 ask you to go back to your jury room. Don't discuss the
8 case while we're back there. While you're back there we'll
9 take up this matter of law and call you back in just a few
10 moments. You may retire at this time.

11 (Whereupon the jury exited the courtroom at 2:49 pm)

12 THE COURT: All right, Mr. Flores.

13 MR. FLORES: Yes, Your Honor. May it please the Court.
14 Ms. Wiygul has just handed up what appears to be a printed
15 off article entitled Sex Offender Treatment Costs Skyrocket,
16 Records Show. It appears to come from a web site. The web
17 site address is here at the bottom.

18 The State would take the position that this article has
19 no relevance in this proceeding whatsoever. We're here to
20 determine whether or not Mr. Yawn meets the definition of a
21 sexually violent predator. While I believe this article
22 discusses the Treatment Program, where it's housed and costs
23 of that Program, those are issues outside of this particular
24 proceeding, this particular proceeding.

25 THE COURT: Okay.

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1 MS. WIYGUL: And, Your Honor, I would simply state that
2 Mr. Flores made this objection, the Court overruled it.

3 THE COURT: Well, ---

4 MS. WIYGUL: The doctor has testified that the average
5 yearly cost is forty-five thousand dollars. The actual
6 yearly cost is right at seventy-one thousand dollars.

7 THE COURT: Well, she guessed. She said she didn't
8 know.

9 MS. WIYGUL: Yes, Your Honor.

10 THE COURT: Let me see your exhibit. What web page is
11 it from?

12 MS. WIYGUL: It's from a publication called The Nerve.

13 THE COURT: Okay. But does it relate to South Carolina
14 treatment or is this ---

15 MS. WIYGUL: It does, Your Honor. And if the Court is
16 just opposed to the kind of offbeat nature of that
17 publication, we have another article from The Post and
18 Courier that we could use instead. It's just a little bit
19 outdated.

20 (Pause)

21 MS. WIYGUL: Would the Court like to review this one
22 also?

23 THE COURT: Well, are you wanting to offer these into
24 evidence?

25 MS. WIYGUL: Not especially, Your Honor. I have no

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1 problem if the doctor just wants to relay the fact that
2 these articles state that the ---

3 THE COURT: Well, but I don't know if she's ever read
4 the articles or not. But you have made your -- is your
5 point that it costs a lot to keep them?

6 MS. WIYGUL: Well, the doctor stated that he wouldn't
7 benefit from treatment, Your Honor. And so for seventy-one
8 thousand dollars to be spent to provide treatment to someone
9 that she says would not benefit from treatment just seems
10 very -- like a very circular waste of money.

11 THE COURT: Well, how do these documents, from whatever
12 source, how do they relate to the issue before us?

13 MS. WIYGUL: Your Honor, they relate because in his
14 opening statements Mr. Flores relayed to the jury that the
15 purpose for the General Assembly for enacting this entire
16 Act was to provide treatment. So that put -- that put the
17 treatment at issue right there. They've heard that from the
18 State about the treatment. And they've heard from the
19 doctor that the average cost of a resident there is forty-
20 five thousand dollars, which is wrong.

21 THE COURT: Well, Mr. Flores, any ...

22 MR. FLORES: Well, I, you know, merely the words of the
23 statute are clear. You have to prove that he should be --
24 suffers from a mental abnormality that makes him likely to
25 re-offend unless confined for long-term control, care and

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1 treatment. So the fact that treatment was mentioned or
2 discussed during opening statement doesn't open the door to
3 an indictment of the Treatment Program, which, I believe, is
4 where Ms. Wiygul is going with this.

5 Now as far as Dr. Gehle has stated about whether Mr.
6 Yawn would benefit from treatment, I think, is also open to
7 interpretation. Her opinion still is, as she testified on
8 her direct testimony, that he should be committed. She has
9 not explained why he -- she has explained why he should be
10 committed.

11 And whether he benefits from treatment is really based
12 on himself. Would he benefit right now while denying his
13 offenses? She says, no, because he's not willing to open up
14 to it. And yet she opines that he should be committed.

15 This information, I believe Ms. Wiygul is not offering
16 it to discuss the heart of the issue of what this case is
17 about. It's about whether or not Mr. Yawn should be
18 committed under the Sexually Violent Predator Act.

19 The cost of the Program, how much an individual, you
20 know, how much the State is spending on an individual are
21 all outside of the scope of this trial. And we would state
22 that if this information went before the jury would
23 definitely confuse matters, take it away from what are we
24 asking them to decide.

25 MS. WIYGUL: And unfortunately, Your Honor, this

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1 information is already before the jury, it's just before the
2 jury with the wrong information.

3 THE COURT: Well, I think, Ms. Wiygul, we're mixing
4 costs and treatment.

5 MS. WIYGUL: Yes, Your Honor.

6 THE COURT: What the jury needs to hear is treatment,
7 wouldn't you agree?

8 MS. WIYGUL: I would, Your Honor. I would have
9 absolutely no problem with Dr. Gehle simply clarifying the
10 cost, ---

11 THE COURT: Well, ---

12 MS. WIYGUL: --- just -- and then move on.

13 THE COURT: I thought her answer was that, you know, I
14 don't really know, but I'll guess.

15 MS. WIYGUL: Well, she said forty-five ---

16 THE COURT: Can she clarify ---

17 MS. WIYGUL: --- thousand dollars.

18 THE COURT: --- or guess ---

19 MR. FLORES: I think she ---

20 THE COURT: --- do a better guess maybe?

21 DR. GEHLE: My guess came from ---

22 MR. FLORES: Sorry, Your Honor.

23 DR. GEHLE: --- a 2005 ...

24 MS. WIYGUL: Yeah.

25 MR. FLORES: She did say that she made that guess based

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1 on records she'd recently seen ---

2 THE COURT: Right.

3 MR. FLORES: --- concerning issues ---

4 THE COURT: Well, okay. Well, ---

5 MS. WIYGUL: And I would have no problem with her
6 stating on the record that having reviewed more recent
7 documents the present cost is ---

8 THE COURT: Well, ---

9 MS. WIYGUL: --- seventy-one thousand dollars.

10 THE COURT: She might not find these authentic. I
11 don't know whether they are or not. Let's take a break and
12 let her review those, if she'd like.

13 And your questions, as you have conceded, Ms. Wiygul,
14 we need to get through the treatment, but if the costs --
15 one more question relating to that if you -- then y'all can
16 all talk to her about that issue. Obviously, Dr. Gehle, you
17 shouldn't be talking to your attorney about your testimony,
18 but if y'all want to get with her and just find out after
19 she reviews those what her take on the cost is. And I'll
20 allow you, if you want, to ask another question about costs.

21 MS. WIYGUL: Thank you, Your Honor.

22 THE COURT: Then we need to move on to the treatment
23 and how that cost relates to treatment. That might be --
24 the more pertinent thing in my view is to -- if it costs
25 that much, then what -- what do you get for the dollar ---

MARIE E. GEHLE - CROSS EXAMINATION BY MS. WIYGUL

1 MS. WIYGUL: Right.

2 THE COURT: --- on the type of treatment that you have?

3 That was the reason for letting the cost in. So you can
4 step down, Dr. Gehle. We're going to take a short break and
5 be ready to proceed in just a few moments.

6 (Whereupon court was in recess at 2:57 pm)

7 (Whereupon court resumed at 3:06 pm)

8 THE COURT: That's going to be entered into evidence?

9 MS. WIYGUL: Well, Your Honor, apparently there is some
10 discussion left.

11 THE COURT: Y'all want to talk a little more?

12 MR. FLORES: I thought she was just going to testify

13 ---

14 MS. WIYGUL: The doctor's familiar with it. It's a
15 report to the General Assembly from 2005.

16 THE COURT: Report from whom?

17 MS. WIYGUL: From the Sexually Violent Predator Act
18 Review Committee, which was appointed by the General
19 Assembly. Dr. Gehle is very familiar with the report. It's
20 not ---

21 THE COURT: So we're not on news articles anymore?

22 MS. WIYGUL: No. No, sir.

23 THE COURT: We've moved on. Okay.

24 MS. WIYGUL: This is an actual -- this is a big one.

25 And I'm not opposed to just discussing it without entering

MARIE E. GEHLE - CROSS EXAMINATION BY MS. WIYGUL

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1 it, ---

2 THE COURT: Okay.

3 MS. WIYGUL: --- if Mr. Flores would like to do it that
4 way.

5 MR. FLORES: Discussing it without entering it? Your
6 Honor, ---

7 MS. WIYGUL: Let her use it as a writing to refresh her
8 memory.

9 MR. FLORES: I think she's just said that she has
10 skimmed this document. I don't know if she's relied upon
11 it. Again, we wouldn't, you know, as far as impeaching with
12 the evidence about the costs, this is something she's relied
13 upon, but admitting this entire report, which gets into
14 matters that are clearly not before this jury, I think, is
15 highly irrelevant.

16 THE COURT: All right. You said you'd just use it to
17 ...

18 MS. WIYGUL: I have no problem if she just wants to use
19 it to refresh her memory. She says she did see the report.
20 She's ---

21 THE COURT: Okay. So are we using that to refresh her
22 memory about costs? Is that -- we're still on costs?

23 MS. WIYGUL: Yes, Your Honor. It also discusses
24 treatment.

25 THE COURT: Okay.

1 DR. GEHLE: But I didn't review every piece of it.

2 THE COURT: Okay.

3 DR. GEHLE: I remember the forty-five thousand is where
4 I got that from, but I did not review much else of that
5 report.

6 THE COURT: Okay.

7 MS. WIYGUL: That's no problem.

8 THE COURT: All right. Let's have our jury come back.

9 MR. FLORES: Thank you, Your Honor.

10 (Whereupon the jury entered the courtroom at 3:08 pm)

11 THE COURT: All right. You may proceed with your
12 examination of the witness, Ms. Wiygul.

13 Cross Examination by Ms. Wiygul Continued:

14 Q. Doctor, I'm going to hand you what's been previously
15 marked as Respondent's 8 in order that you may refresh your
16 memory, specifically pages 4 and 6.

17 (Pause)

18 Q. Doctor, in 2005 what was the yearly cost of a resident
19 in this Program?

20 A. Forty-six thousand dollars annually.

21 Q. Now are you familiar with a committee that was created
22 to review the Sexually Violent Predator Act in 2005?

23 A. Only insofar that I saw this executive summary. That's
24 -- I'm not familiar with it otherwise, but it is the author
25 of this.

MARIE E. GEHLE - CROSS EXAMINATION BY MS. WIYGUL

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1 Q. Okay. But that committee presented findings to the
2 General Assembly regarding that, didn't they?

3 A. I guess so.

4 Q. Okay. And that committee made certain recommendations
5 to our Government, to our Legislature, didn't they,
6 regarding the treatment of the individuals in this Program?

7 A. It looks like they made a number of recommendations.

8 Q. And were -- was one of those recommendations that the
9 State allocate funding to provide forensic psychiatric
10 evaluations for all sex offenders prior to their criminal
11 sentence being imposed?

12 A. It says allocate funding to provide pre-sentencing
13 forensic psychiatric evaluation for all sex offenders.

14 Q. Okay. And that committee also recommended that the
15 State provide treatment for sex offenders while they were in
16 prison, didn't they?

17 A. Yes.

18 Q. But Mr. Yawn wasn't offered any sex offender treatment
19 while he was in the Department of Corrections, was he?

20 A. At the time I interviewed him, I don't believe that he
21 was, while he was in the jail already. So, no, he was not.

22 Q. Right. And you met with Mr. Yawn for about two and a
23 half hours, correct?

24 A. Correct.

25 Q. You stated that you never spoke with his wife?

MARIE E. GEHLE - CROSS EXAMINATION BY MS. WIYGUL

1 A. No.

2 Q. Never spoke with his sister?

3 A. No.

4 Q. Never spoke with his sex offender therapist that
5 treated him?

6 A. Correct.

7 Q. Other than your interview with Mr. Yawn all the
8 information you relied on was provided by the State or was
9 the Static-99, correct?

10 A. It was provided by the Multi-Disciplinary Board ---

11 Q. Um-hum (affirmative).

12 A. --- and the Attorney General's Office.

13 Q. Um-hum (affirmative). It was provided by State
14 agencies, in other words, or by law enforcement?

15 A. Correct.

16 Q. Okay. And you stated that Mr. Yawn has a job waiting
17 for him when he gets out, correct?

18 A. That's what he told me.

19 Q. Okay. And you're aware that if released he would be
20 required to wear a GPS monitor for the rest of his life,
21 correct?

22 A. I'm not aware how long he has to wear a GPS monitor.

23 Q. Well, you stated that you're familiar with this type of
24 laws, with these type of laws, correct?

25 A. What type of laws?

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1 Q. Sex offender laws ---

2 A. Yes.

3 Q. --- in the State of South Carolina.

4 A. Yes.

5 Q. And so you're aware that anyone that committed anything

6 on the list of crimes after a certain time period is

7 required to wear a GPS monitor for as long as they are

8 required to be on the sex offender registry, correct?

9 A. I've not been aware of how long they have to wear the

10 GPS monitor.

11 Q. Okay. Doctor, I'm going to show you what's been

12 previously marked as Respondent's 6. Could you identify

13 that document?

14 A. It says it's a printed Westlaw document. It says the

15 Code of Laws of South Carolina 1976 Annotated, Law

16 Enforcement and Public Safety, Title 23.

17 Q. And is that South Carolina Code 23-3-540, governing GPS

18 monitoring?

19 A. Electronic monitoring, yes.

20 Q. Okay. And in reviewing sections (b) and (c) of that

21 code section would you agree that Mr. Yawn will be required

22 to wear a GPS monitor for the rest of his life?

23 A. Did you say (b) and (c)?

24 Q. Yes, ma'am.

25 A. I don't -- it doesn't specify a time-frame. It just

MARIE E. GEHLE - CROSS EXAMINATION BY MS. WIYGUL

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1 says that if they commit a certain type of offense that they
2 will be monitored by the Department of Probation, Pardon or
3 Parole and Pardon Services with active electronic monitoring
4 device.

5 Q. Um-hum (affirmative).

6 A. It doesn't specify any specific time.

7 Q. Could you look on page 2 at section (h)?

8 (Pause)

9 Q. Having read section (h) of that code section would you
10 agree that Mr. Yawn will be required to wear a GPS monitor
11 for the rest of his life?

12 A. According to this, that looks to be accurate.

13 Q. And Mr. Yawn will be under the supervision of Probation
14 -- the Greenville County Probation Office for five years
15 after he's released, isn't that correct?

16 A. I believe so. Yes.

17 Q. Okay. And the fee for that GPS monitor is paid by Mr.
18 Yawn, correct?

19 A. I believe so.

20 Q. Okay. The Static-99, it doesn't measure sexual
21 deviance, does it?

22 A. Not directly.

23 Q. And it's not intended to measure other types of mental
24 illness, is it?

25 A. No. It just gives a risk estimate.

MARIE E. GEHLE - CROSS EXAMINATION BY MS. WIYGUL

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1 Q. Okay. You just kind of plug in the numbers and see
2 what comes out?

3 A. Well, not plug in the numbers, but you look at certain
4 factors.

5 Q. And if certain factors are there, there's no changing
6 them, right?

7 A. There is -- they can always change upwards.

8 Q. But they can't change down, can they?

9 A. They can for age. Age will result in losing points on
10 the actuarial.

11 Q. But other than getting older there's no way to lower
12 your score using that statistical device, correct?

13 A. Correct.

14 Q. Okay. Doctor, you stated that at this point you don't
15 believe that Mr. Yawn would benefit from treatment. Can you
16 tell us what type of treatment he will be offered down in
17 this Program?

18 A. If he goes to the Program he will be offered cognitive
19 behavioral treatment. And it's voluntary. He can choose to
20 participate or not participate.

21 Q. And that cognitive therapy, cognitive treatment, you
22 mean group therapy, right?

23 A. Yeah. It's working on his thoughts and feelings in
24 regard to sexual offending.

25 Q. Okay. And that group therapy occurs how often?

MARIE E. GEHLE - CROSS EXAMINATION BY MS. WIYGUL

1 A. It's typically once a week.

2 Q. For how long?

3 A. For -- I believe it's two hours.

4 Q. Okay. And is that group therapy overseen by a medical
5 doctor?

6 A. Is it ever?

7 Q. Is it overseen by a medical doctor?

8 A. A psychologist supervise the therapists. And then the
9 psychologist is supervised, I guess there's a medical doctor
10 that oversees the Program as well, but I don't think that
11 the treatment is directly observed by a medical doctor.

12 Q. Okay. And the treatment isn't directly observed by a
13 psychologist, is it?

14 A. A psychologist may observe the treatment from time to
15 time.

16 Q. But in general it's just a caseworker and the residents
17 of the Program sitting in a group once a week, right?

18 A. It would be a therapist, yes.

19 Q. Okay. You're a member of the American Psychological
20 Association, is that right?

21 A. Correct.

22 Q. And as a member of that association are you familiar
23 with its views on this type of proceeding, on its views of
24 Sexually Violent Predator Programs and psychologists
25 referring people into these programs?

MARIE E. GEHLE - CROSS EXAMINATION BY MS. WIYGUL

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1 A. I have not read about their recent views, no.

2 Q. Are you aware of their historical views?

3 A. Not the American Psychological Association's, no.

4 Q. Okay. Are you aware of a 2004 study that was done in
5 Florida by the American Psychological Association studying
6 the reliability of recommendations made by evaluators in
7 this type of case?

8 A. I don't know. I'm without the name of the article.
9 I've read a lot of articles. I'm not sure which one you're
10 talking about specifically.

11 Q. The name of the article would be Reliability of
12 Sexually Violent Predator Civil Commitments Criteria in
13 Florida by Jill S. Levenson.

14 A. I'm not sure if I've read that or not.

15 Q. Are you familiar with the way this Program is portrayed
16 as far as the treatment?

17 A. I ---

18 Q. Are you familiar ---

19 A. --- I don't know.

20 Q. --- with what the Attorney General's Office states
21 about the treatment in this Program?

22 A. No.

23 Q. Doctor, I'm going to show you what's been previously
24 marked as Respondent's 7. Would you identify that document?

25 A. It's a printout, it says from SAAG.gov.

MARIE E. GEHLE - REDIRECT EXAMINATION BY MR. FLORES

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1 Q. And is that the South Carolina Attorney General's
2 Office?

3 A. I mean, I guess. I guess so.

4 Q. And ---

5 MS. WIYGUL: Your Honor, at this time I'd ask that
6 Respondent's -- that this document be moved into evidence.

7 THE COURT: Any objection from the State?

8 MR. FLORES: No objection, Your Honor.

9 THE COURT: Without objection, exhibit -- Respondent's
10 exhibit number 7 is admitted into evidence.

11 (Whereupon Defendant's exhibit 7 was admitted into
12 evidence)

13 Q. Doctor, would you agree that the South Carolina
14 Attorney General's Office states that offenders found to be
15 sexually violent predators are committed to the South
16 Carolina Department of Mental Health in an intensive
17 Treatment Program?

18 A. That's what it says.

19 Q. Do you think that one group therapy session a week is
20 intensive?

21 A. Not necessarily.

22 Q. I don't have any further questions. Thank you, doctor.

23 THE COURT: Any redirect?

24 MR. FLORES: Just a couple of questions, Your Honor.

25 Redirect Examination by Mr. Flores:

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1 Q. I just want to ask you a couple of questions, Dr.
2 Gehle, to clarify some information that Ms. Wiygul has
3 brought forth. She asked you -- she began her cross
4 examination by asking you about a meeting of colleagues to
5 discuss your cases. Is that typical protocol for experts in
6 your field?

7 A. If they have access to other people who do this kind of
8 work they might sit down in a meeting. Otherwise, there's
9 always email or networking that way 'cause there are not
10 many very experts in this field.

11 Q. So it's not uncommon for an individual like yourself to
12 consult other experts in your field in rendering diagnoses
13 in these ---

14 A. Correct.

15 Q. --- type cases?

16 A. It's a good idea.

17 Q. Ms. Wiygul asked you about a transcript of a trial or a
18 mistrial, I guess, with regard to Plaintiff's exhibit 4.
19 Would you -- did you learn of any of that information based
20 on your interviews or ---

21 A. No, I did not.

22 Q. Okay. So Mr. Yawn didn't tell you he had previously
23 gone to trial, and got a mistrial and then pled guilty?

24 A. No.

25 Q. Was the fact that he pled guilty significant to you?

MARIE E. GEHLE - REDIRECT EXAMINATION BY MR. FLORES

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1 A. I mean, yes and no. I guess it means that he's willing
2 to admit guilt, but, you know, there are a variety of
3 reasons that people do that.

4 Q. Ms. Wiygul discussed with you the Static-99R, the
5 static factors that don't change outside of age. I believe
6 I asked you whether or not that was the only basis for your
7 opinion. Was it?

8 A. It's not the only basis for my opinion. It just gives
9 ---

10 Q. And -- I'm sorry.

11 A. It just gives a baseline.

12 Q. And would it be appropriate for you to base your
13 decision on Mr. Yawn's risks solely on that instrument?

14 A. I don't believe it would be appropriate, no.

15 Q. Now Ms. Wiygul asked you about whether you had
16 consulted with Mr. Yawn's wife, or sister or with any
17 previous treatment providers. Is it common to contact these
18 types of individuals when conducting these evaluations?

19 A. Only if there are questions or, you know, I mean, some
20 people do it different ways.

21 Q. But it's not part of your protocol?

22 A. Not typically.

23 Q. Now the last thing I want to ask you about, because you
24 were pretty clear about this, was that you did not believe
25 that Mr. Yawn would benefit from treatment at this time, yet

MARIE E. GEHLE - REDIRECT EXAMINATION BY MR. FLORES

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1 you have opined that he should be committed to the Sexually
2 Violent Predator Treatment Program.

3 A. Well, I'm just asked to give an opinion as to whether
4 he meets the criteria to be considered a sexually violent
5 predator. I'm not asked whether he'll benefit from
6 treatment. The law's been pretty clear that, you know,
7 treatment's voluntary, that treatment's not the primary goal
8 of the Act, that it's care, control and treatment and that
9 public safety is a big part of the concern.

10 When somebody's in denial of their offenses, they can
11 still choose to participate in treatment and maybe they will
12 start to open up, you know. And that's what the majority of
13 the people committed to the Program do. But when somebody's
14 in denial, they're not necessarily going to benefit directly
15 from treatment until, you know, they start to become honest.

16 MR. FLORES: Those are all the questions I have, Your
17 Honor.

18 THE COURT: All right. Thank you, doctor. You may
19 step down.

20 MR. FLORES: Your Honor, Dr. Gehle is here under
21 subpoena. We would ask that she be released at this time.

22 THE COURT: Any objection?

23 MS. WIYGUL: I have no objection.

24 THE COURT: All right. Without objection, Dr. Gehle
25 may be excused from the trial of this case. Any other

1 witness from the State?

2 MR. FLORES: There are no further witnesses from the
3 State, Your Honor. We would rest at this time.

4 THE COURT: Ms. Wiygul, do you have any witness you
5 wish to call?

6 MS. WIYGUL: Your Honor, I do. I would ask for a brief
7 recess before we call those witnesses.

8 THE COURT: All right. Ladies and gentlemen, I'm going
9 to ask you to go back to your jury room. What I want you to
10 do while you're back there is select a foreperson.

11 What the foreperson does -- sometimes you may have
12 already discovered when you're back in your jury room you
13 may have a need, a temperature adjustment, or a cup of
14 coffee, or whatever it is, we need to have someone back
15 there as sort of the foreperson to be the liaison with the
16 Court to write out whatever question or need you have for
17 the Clerk's Office or if it's a legal question for me, and
18 we'll try to resolve it.

19 You may have a -- you need to call about a child.
20 Whatever it is, that foreperson will be the one who will
21 write it out, whatever it is, for whatever juror, give it to
22 one of the bailiffs, and we'll get it taken care of as best
23 we can.

24 Sometimes exhibits are admitted into evidence and
25 passed around to a jury. The lawyers may want to show it to

1 you during the progress. And they'll give it to the
2 foreperson, let that foreperson see it and pass it around to
3 everyone else.

4 Ultimately what the foreperson will do is be the one
5 who will facilitate the discussion, make sure that when
6 we're ready, all the evidence is in, and I've instructed you
7 on the law, that that person will facilitate the discussion,
8 make sure everyone has their say and on behalf of the
9 jurors, write out on the verdict form for us.

10 So if you will, select a foreperson. Just write the
11 name down and give it to the bailiffs during this short
12 break that we have.

13 Then when we come back the foreperson will occupy the
14 seat on the front row closest to the witness chair here.
15 The rest of you as you come and go, as I've already
16 observed, some of you might want to sit on the front row,
17 some on the back. You can pick whatever chair you'd like.

18 But we'll take a short break and then we'll be ready to
19 proceed. If you will retire to your jury room. And once
20 you've selected a foreperson, just write the name down.

21 (Whereupon the jury exited the courtroom at 3:30 pm)

22 **THE COURT:** Yes; ma'am.

23 **MS. WIYGUL:** Your Honor, we would move for a directed
24 verdict made on the basis that Dr. Gehle's testimony
25 specifically states that Mr. Yawn would not benefit from

1 treatment. The statute specifically states that the
2 commitment would be for control, care and treatment and,
3 therefore, it's not possible to get ---

4 THE COURT: Well, I believe that -- in the fullness of
5 her testimony was that in his present state that she didn't
6 think treatment would be any benefit to him because of the
7 denial. So I think that, you know, treatment for anything
8 with mental health and so forth is a continuum and as folks
9 accept the treatment. I think that they've met the burden
10 of their proof at this stage. So I respectfully deny your
11 motion.

12 MS. WIYGUL: Yes, Your Honor.

13 THE COURT: All right. Let's take about a ten minute
14 break. And then we'll be ready to proceed.

15 MR. FLORES: Thank you, Your Honor.

16 (Whereupon court was in recess at 3:31 pm)

17 (Whereupon court resumed at 3:43 pm)

18 THE COURT: All right. You ready to proceed?

19 MS. WIYGUL: We are, Your Honor.

20 MR. FLORES: Yes, Your Honor.

21 THE COURT: Okay. If the jury's ready, you can have
22 them come in, Mr. Frazier.

23 (Whereupon the jury entered the courtroom at 3:44 pm)

24 THE COURT: All right. Mr. Foreman, ladies and
25 gentlemen, we're now ready to proceed. Ms. Wiygul, you may

SARA MADDEN - DIRECT EXAMINATION BY MS. WIYGUL

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1 call your first witness.

2 MS. WIYGUL: Respondent would call Sara Madden.

3 MADAME CLERK: If you would place your left hand on the
4 Bible and raise your right hand, please.

5 Sara Madden, being duly
6 sworn testified as follows:

7 MADAME CLERK: Please state your name for the record.

8 MS. MADDEN: It's Sara Madden.

9 MADAME CLERK: Thank you.

10 Direct Examination by Ms. Wiygul:

11 Q. Ms. Madden, how do you know Calvin Yawn?

12 A. He's my brother.

13 Q. Is he your older brother or younger brother?

14 A. He's the youngest of four of us.

15 Q. And could you tell us a little bit about him?

16 A. He's a great brother. I mean, he loves his family. He
17 helps out as much as he can and never had any problems with
18 him.

19 Q. Okay.

20 A. He's always been a good kid. I mean, I'm a good bit
21 older than him. When mom and dad was working, I always
22 babysat him.

23 Q. Okay. Do you know where he would be living if he were
24 released?

25 A. He'd be with me and my husband.

SARA MADDEN - DIRECT EXAMINATION BY MS. WIYGUL

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1 Q. Okay. So to the best of your knowledge he has no plans
2 to move back in with his wife?

3 A. As of right now, no.

4 Q. Okay.

5 A. He's going to be staying with us to get back on his
6 feet.

7 Q. And is it your understanding that he would be under the
8 supervision of Greenville County Probation for the next five
9 years?

10 A. Yes.

11 Q. And is it your understanding that he will be required
12 to wear a GPS monitor for the rest of his life?

13 A. Yeah.

14 Q. And he'll have to pay for that monitoring fee?

15 A. Right.

16 Q. And that's monitored by Probation, Parole and Pardon
17 Services?

18 A. Yes.

19 Q. Okay. Who else lives in your home?

20 A. My son, which is twenty-six. He stays with us. And me
21 and Calvin also have a brother. He's forty-six. And he's
22 deaf. And I have taken over taking care of him since our
23 mother died last year.

24 Q. Okay. And I'm sorry, you said he's deaf?

25 A. Yes.

SARA MADDEN - DIRECT EXAMINATION BY MS. WIYGUL

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1 Q. Okay. How many bedrooms are in your home?

2 A. Five.

3 Q. And do you know about Calvin's plans regarding
4 employment?

5 A. He has one job. One guy has called several times
6 wanting to know if Calvin's gotten out yet because he's
7 waiting on Calvin to get out where he can call him to go to
8 work with him.

9 Q. And what type of work is that?

10 A. It's automotive mechanic.

11 Q. All right. Do you know if he has transportation?

12 A. Yes, he does.

13 Q. All right. Have you or anyone else that you're aware
14 of made any inquiries about getting Calvin some sex offender
15 treatment?

16 A. I called a Dr. Bodtorf, I think that's the way you
17 pronounce it, last week.

18 Q. And where is he located?

19 A. Over on Wade Hampton.

20 Q. Okay.

21 A. And they are taking new patients. They said that they
22 would see him, but he would have to be released before I
23 could make an appointment.

24 Q. Okay. And do you plan to follow up to make sure he
25 goes to that treatment?

SARA MADDEN - DIRECT EXAMINATION BY MS. WIYGUL

1 A. Yes.

2 Q. All right. We've heard some kind of confusing
3 information about the fact that Calvin pled guilty to four
4 sex offenses, four counts of lewd act ---

5 A. Um-hum (affirmative).

6 Q. --- on a child. Are you aware of anything regarding
7 any of those pleas?

8 A. Yeah.

9 Q. Can you tell us what you're aware of?

10 A. Which one you want me to start with?

11 Q. Start at the beginning.

12 A. The one in Anderson, the incident at the lake, ---

13 Q. Um-hum (affirmative).

14 A. --- it's my understanding he was saving the child from
15 drowning.

16 Q. Okay.

17 A. The father was out there drunk. And he was saving the
18 child from drowning.

19 Q. Okay.

20 A. What transpired after that, I do not know.

21 Q. Okay. And were charges brought immediately after that
22 incident ---

23 A. No.

24 Q. --- or was there a delay?

25 A. There was a -- there was a delay.

SARA MADDEN - DIRECT EXAMINATION BY MS. WIYGUL

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1 Q. About ---

2 A. But ---

3 Q. --- a week?

4 A. No. I'm going to say more like three, four, maybe five
5 months ---

6 Q. Okay.

7 A. --- after it happened. And the thing was that day is
8 my two kids were out there.

9 Q. And how old were your children at that time?

10 A. At the time my daughter was four.

11 Q. How old was your son?

12 A. And my son was ten or eleven.

13 Q. Okay. Has your son ever made any complaints to you
14 about inappropriate touching ---

15 A. Never. Never.

16 Q. Are you aware if he's comfortable being in Calvin's
17 presence?

18 A. Yes, he is.

19 Q. Were you present on October 6th, for October 5th and
20 October 6th during Calvin's trial on the later charge?

21 A. Yes.

22 Q. Can you tell us what happened with that?

23 A. On that one, the jury come back, it was a hung jury.

24 Q. And that just meant they simply couldn't make ---

25 A. They couldn't agree.

SARA MADDEN - DIRECT EXAMINATION BY MS. WIYGUL

1 Q. Okay.

2 A. So his attorney at the time just told him to go ahead,
3 they could get him this plea bargain, he would be -- he
4 could go ahead, get out and get released, be back with his
5 family and that would be the end of it.

6 Q. Okay. So basically he told him if you plead guilty you
7 can go home today?

8 A. Exactly.

9 Q. All right. Did -- was there any discussion about this
10 Act, about this Sexually Violent Predator Act?

11 A. He was told that it would not apply to him.

12 Q. Who told him that?

13 A. His attorney at the time.

14 Q. Okay. Are you comfortable with the idea of having
15 Calvin in your home?

16 A. Yes, I am.

17 Q. And do you understand that he won't ever be able to be
18 around children without having another adult there?

19 A. Yes.

20 Q. And are you comfortable with those ---

21 A. I'm -- yeah.

22 Q. --- criteria?

23 A. I'm comfortable as I'll ever be. I have no problems
24 with him whatsoever.

25 Q. I have no further questions. Thank you, ma'am.

CALVIN YAWN - DIRECT EXAMINATION BY MS. WIYGUL

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1 THE COURT: Mr. Flores, you may cross examine the
2 witness.

3 MR. FLORES: I have no questions for this witness.

4 THE COURT: All right. Thank you, ma'am. You may step
5 down. You may call ---

6 MS. WIYGUL: Your Honor, ---

7 THE COURT: --- your next witness.

8 MS. WIYGUL: --- Respondent would call Calvin Yawn.

9 THE COURT: Come around and be sworn, please, sir.

10 MADAME CLERK: Place your left hand on the Bible and
11 raise your right hand, please.

12 Calvin Yawn, being duly
13 sworn testified as follows:

14 MADAME CLERK: Please state your name for the record.

15 MR. YAWN: Calvin Yawn.

16 MADAME CLERK: Thank you. You may be seated.

17 Direct Examination by Ms. Wiygul:

18 Q. Calvin, how old are you?

19 A. I'll be thirty-eight in May.

20 Q. Okay. And do you admit that you pled guilty to these
21 four counts of lewd act upon a child?

22 A. Yes, I do.

23 Q. And when you pled guilty did anyone reference these
24 charges as violent?

25 A. No.

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1 Q. Calvin, I'm showing you what the Petitioner, the State,
2 has marked as exhibits 1 through 4. Could you -- could you
3 tell me what blocks is checked under each of those offenses?

4 A. On 1 and 2, non-violent is checked on both of them.
5 And on 3 and 4, non-violent is checked on both of those.

6 Q. Okay. Calvin, why did you plead guilty on Valentine's
7 Day in 2003?

8 A. The statements that I give the investigators, they --
9 basically they broke it down and told me that what I'd done
10 and the way that I'd done it, what made it against the law
11 was the fact that the child was not biologically mine.

12 Q. Okay.

13 A. And at that point I went and hired an attorney. He
14 looked at it and he told me, he said that, you know, he'll
15 see what he can do. And six months later they, you know, he
16 called me up and said that we had a plea deal, but, you
17 know, if I would take it. And he said it would be about the
18 best he could get was pleading to the lewd act on a minor on
19 the first two.

20 Q. Okay. And what was your sentence on that offense?

21 A. I was given eight years suspended to ninety days and
22 five years probation and sex offender counseling.

23 Q. Okay. And how did you do those ninety days?

24 A. On the weekends.

25 Q. All right. And was that so that you could keep your

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1 job and stuff?

2 A. That was -- at the time it was supposed to be so I
3 could keep the job that I had. I'd just started a new
4 career doing long haul trucking.

5 Q. All right. Calvin, why did you plead guilty on October
6 6th of 2010?

7 A. That would be the one that we actually took it to a
8 jury trial. That one is the one that was from -- yeah,
9 that's the one that took place, supposed to have took place
10 in Travelers Rest.

11 The reason I pled guilty to that one is we had turned
12 it over to the jury to deliberate it. They had it for about
13 three and a half hours.

14 Q. Um-hum (affirmative).

15 A. My attorney come back to me and said that the jury was
16 hung ten to two.

17 Q. Okay.

18 A. He told me that it wouldn't take much to -- to convince
19 the other two to change their mind. And he told me that --
20 he asked me what was my biggest concerns. I told him, you
21 know, my biggest concerns was my wife and kids.

22 And he asked me at that point which way did I want to
23 go because they -- the prosecutor had offered up a three
24 year plea deal, wanted to know if I would take it at that
25 point. And I told him that I wouldn't, that I'd take my

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1 chances with the jury.

2 Q. Okay.

3 A. We were brought out back into the courtroom. And
4 before the jury was brought out, Judge Pyle was the judge on
5 the bench at the time. He called counsel to the bench and
6 counsel left the courtroom. They were gone about fifteen
7 minutes, come back and offered me a suspended sentence for
8 the days that I'd already had for sitting at the Greenville
9 County Detention Center and five years probation.

10 Q. So they told you you could go home?

11 A. Yes.

12 Q. All right. And why did you plead guilty on February
13 2nd of this past year?

14 A. That was the one that was on my nephew by marriage.
15 That one, I pled guilty to it just to get it over with. I
16 was tired of fighting so much.

17 Q. So were those -- the plea from October 6th and the plea
18 from February 2nd, were those kind of wound up together?

19 A. Yes.

20 Q. And your time was run concurrent?

21 A. Yes. That was ---

22 Q. Which means at the same time?

23 A. Yeah. That was part of the -- that was part of the
24 plea deal. The one from February the 2nd, I was actually
25 given -- it was three years -- it was a three year deal with

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1 four hundred and ninety-six days credit from where I had sat
2 in Greenville County Detention Center.

3 Q. Calvin, other than these four offenses have you ever --
4 what was your involvement with law enforcement with the
5 legal system? What did you know about it?

6 A. Before these offenses, other than a couple of traffic
7 tickets, nothing.

8 Q. Okay. So were you aware of the elements of the crimes,
9 and what your options were and that you would be subject to
10 the possibility of involuntary commitment?

11 A. No.

12 Q. If you'd known that would you have pled guilty in 2003?

13 A. In 2003, like I said, I understood the way it was told
14 to me. And the attorney I had then, he didn't even say
15 anything about the Sexually Violent Predator Act at that
16 point. He never told me anything about it. And he
17 basically, you know, I admit, you know, to, you know, gave
18 them statements to what I'd done. So ---

19 Q. Okay. Calvin, were you ever alleged to have raped
20 anyone?

21 A. No.

22 Q. Were you ever alleged to have caused physical harm to
23 any -- any children or anybody?

24 A. No.

25 Q. Okay. Do you do drugs?

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1 A. Nope.

2 Q. Have you ever done drugs?

3 A. No, ma'am.

4 Q. Do you drink?

5 A. Other than experimenting back when I was a teenager,

6 no.

7 Q. Okay. Do you have a job waiting for you if you're

8 released?

9 A. The last that I have heard, I've got about three jobs

10 waiting for me.

11 Q. Okay. And has that -- just from people calling your

12 wife and your sister?

13 A. Yes.

14 Q. Okay. And what type jobs are those?

15 A. Two of them is an automotive mechanic, and one of them

16 is actually with a lawn service.

17 Q. Okay. Now do you understand that if you're released

18 you can never be unsupervised around children again?

19 A. Yes, ma'am.

20 Q. Even your own children?

21 A. Yes, ma'am.

22 Q. And have you had discussions with your wife and your

23 family about that?

24 A. Yes.

25 Q. And do you think they understand that?

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1 A. Yes.

2 Q. And do you understand that you'll have to wear an ankle
3 monitor, which hooks up to a GPS tracking system and that
4 you'll have to wear that the rest of your life?

5 A. Yes.

6 Q. And do you understand that for the next five years
7 you'll be under the supervision of Greenville County
8 Probation Office?

9 A. Yes.

10 Q. And you'll be subject to all the probation
11 requirements?

12 A. Yes.

13 Q. And do you understand that you'll have to pay for the
14 cost of that monitoring and the probation supervision?

15 A. Yes.

16 Q. Okay. I have no further questions. Thank you.

17 MR. FLORES: Just a few questions, Your Honor.

18 THE COURT: Mr. Flores, you may cross examine.

19 MR. FLORES: Thank you, Your Honor. May it please the
20 Court.

21 Cross Examination by Mr. Flores:

22 Q. I just have a couple of questions for you, Mr. Yawn.
23 You've testified, and I think the documents show that you
24 did, indeed, plead guilty to four lewd acts on a minor, is
25 that correct?

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1 A. Yes, sir.

2 Q. And you came to a courtroom both here and Anderson,
3 correct?

4 A. Yes.

5 Q. And you stood before a judge, and you put your hand on
6 the Bible, and you swore to tell the whole truth and nothing
7 but the truth so help you God, is that correct?

8 A. Yes.

9 Q. And the judge asked you if you were under the influence
10 of any drugs or alcohol that might alter your ability to
11 consent to pleading guilty, is that correct?

12 A. Yes.

13 Q. And you said that you had and the judge accepted that,
14 right? Correct?

15 A. Yes.

16 Q. He said, I find that you freely and voluntarily waive
17 -- make this decision to plead guilty, is that correct?

18 A. Yes.

19 Q. And he -- and you pled guilty to the facts underlying
20 each of these four offenses, is that correct?

21 A. Yes.

22 Q. Mr. Yawn, I don't want to appear to be condescending,
23 but I do want to make sure I follow up on some -- a point in
24 your report. You have a GED, is that correct?

25 A. No. I have a high school diploma.

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1 Q. High school diploma, I'm sorry.

2 A. Yes, sir.

3 Q. And you've never had any special education or delayed
4 learning, is that correct?

5 A. No, sir.

6 MR. FLORES: No further questions, Your Honor.

7 THE COURT: Any redirect?

8 MS. WIYGUL: No, Your Honor.

9 THE COURT: All right. Thank you, sir. You may step
10 down, Mr. Yawn. You may call your next witness, Ms. Wiygul.

11 MS. WIYGUL: Respondent rests.

12 THE COURT: Anything in reply, from the State?

13 MR. FLORES: Nothing further, Your Honor.

14 THE COURT: Ladies and gentlemen, we've heard all the
15 evidence in the case. The attorneys now will have an
16 opportunity to present you a closing statement concerning
17 the -- their view of the evidence.

18 I'm going to instruct you on the law after they finish
19 that. And then it'll be your case to decide. Both
20 attorneys ready to proceed with your closing or do you need
21 a few moments? You ready to proceed now?

22 MS. WIYGUL: We can proceed, Your Honor.

23 THE COURT: All right. I've told you before that what
24 they have to say to you both in their opening statement and
25 in their closing is not evidence for you to consider. But

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1 while it's not evidence, you've heard the testimony, the
2 exhibits are marked, and identified and they'll be given to
3 you in your deliberations, but I nevertheless urge you to
4 listen carefully as the attorneys address you. I'm
5 confident they can give you valuable insights to help you in
6 your deliberations soon to take place after I've instructed
7 you on the law. Mr. Flores, you may address the jury in
8 your closing.

9 MR. FLORES: Thank you, Your Honor. May it please the
10 Court. Ladies and gentlemen of the jury, first off, before
11 I talk about some of this case, I want to thank you, thank
12 you on behalf of the Attorney General, thank you on behalf
13 of the State, Mr. Yawn and Ms. Wiygul.

14 We have come to you today to answer a very difficult
15 question, very difficult question, indeed, whether or not
16 Mr. Yawn is a sexually violent predator as defined by our
17 Legislature. As I said before, the State must prove to you
18 that, first, Mr. Yawn has been convicted of a sexually
19 violent offense and, second, that he suffers from a mental
20 abnormality that makes him more likely to commit acts of
21 sexual violence.

22 To that end, we have presented the testimony of Dr.
23 Marie Gehle, who's employed by the Department of Mental
24 Health. She was ordered by the court to perform an
25 evaluation in this case to answer a question, do you believe

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1 Mr. Yawn meets commitment -- who meets the legal standards
2 for commitment to the Sexually Violent Predator Treatment
3 Program? She came here today because she was ordered to do
4 so to give that testimony to you so you could decide if Mr.
5 Yawn meets that criteria.

6 You learned a lot of very unpleasant things about Mr.
7 Yawn's life and history. Concerning his sexually violent
8 offenses, there are four. They take place over a period of
9 time beginning in 1995, the last one in 2009. Mr. Yawn has
10 testified before you today, one of the reasons I pled
11 guilty, one, is because the cops said if it was my own
12 children it would be okay. Two, because my biggest concern
13 was my wife and children. And, three, because they weren't
14 violent offenses.

15 Our Legislature has defined sexually violent offenses,
16 committing a lewd act on a child, fondling a child or
17 touching a child's genitalia is a sexually violent offense.
18 Regardless of what that sentencing sheet says, regarding
19 sentencing, that it was a non-violent offense, I will
20 concede the fact that Mr. Yawn did not physically rape those
21 boys. He did not beat them. There was no physical
22 violence, if you will.

23 But there are other types of violence, emotional
24 violence, mental violence. Four boys that have to live with
25 the scars of the acts that he did to them. That is

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1 violence. That is sexual violence. That is what we are
2 seeking to talk about today. So it is relevant. Four
3 sexual violent offenses. Let's move on.

4 Does Mr. Yawn suffer from a mental abnormality that
5 makes him more likely to commit acts of sexual violence? I
6 would submit to you that Dr. Gehle's testimony was clear on
7 this point.

8 As a doctor who has conducted a number of these
9 evaluations and has a number to continue to evaluate, I
10 believe, my professional opinion, that Mr. Yawn suffers from
11 pedophilia. He's sexually attracted to prepubescent males.
12 It's a non-exclusive type because he's also attracted to
13 adult females. He's married. He has children. But his
14 sexual interests also lie with young boys.

15 But what did Dr. Gehle say next? Did she say I looked
16 at those offenses, I looked at diagnoses and that was it?
17 Case closed? She said, no. It would be wrong of me to
18 consider just that one piece of information. As we expect
19 our law enforcement to do the entire job when they bring a
20 case, we expect that from our mental health community, when
21 they bring these -- when they are asked to do these
22 evaluations in these types of cases.

23 Dr. Gehle looked at records. She considered legal
24 records. She sought out mental health records, ones she
25 could not obtain. She conducted interviews. She looked at

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1 literature. And she rendered her professional opinion. She
2 said, yes, I believe that Mr. Calvin Yawn, who is diagnosed
3 with pedophilia will do these things again. One, past
4 criminal history is very relevant, fifteen year period.

5 Yet if we listen to what Mr. Yawn says, I pled guilty
6 because, you know, the lawyer said so. But he did plead
7 guilty. He had to stand in front of a judge like Judge
8 Welmaker, and the judge had to accept that plea.

9 She relied on an instrument much like our doctors would
10 for heart attacks. There are some things we just can't
11 change, genetics, if you've had a heart attack. Those
12 things were considered in this instrument called the Static-
13 99. It's a study instrument, as she said.

14 And Mr. Yawn has a number of things in that instrument
15 that kind of hurt him, if you will. He comes out, when
16 compared to other individuals similar to him, as being a
17 moderately high risk to re-offend. When she said based on
18 that instrument only ten percent of individuals scored
19 higher than him or eighty-one percent scored lower, with the
20 math added up there. But consider that as one piece of
21 evidence.

22 And she said, again, when I asked her, was that the
23 sole piece of information you relied on because, quite
24 honestly, I mean, we're talking about risk, we're talking
25 about is he going to do it again? And she said, no, I could

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1 not rely on that solely. I looked at other risk factors,
2 other things that are discussed in the literature. Based on
3 all that information, based on all of that information I
4 believe that Mr. Yawn is a sexually violent predator and he
5 should be committed. That is her professional opinion.

6 But I want to leave you with one other point because
7 it's a very good point. Ms. Wiygul brought it out during
8 her cross examination. She said, do you think Mr. Yawn will
9 benefit from treatment right now? She quite frankly said,
10 no, he won't.

11 Why put him in this Treatment Program and he's not
12 going to benefit? Well, with that line of logic then we
13 say, well, maybe we shouldn't put him in there at all. But
14 what is the reason why he wouldn't benefit from treatment?
15 It goes back to why he pled guilty. It wasn't because of
16 the victims or because he really did what he did, he's
17 denying it. He won't benefit from treatment because he
18 denies that these things ever happened. So, of course, he's
19 not going to benefit from treatment right now.

20 I submit to you that the State has presented the case
21 and has met the burden showing that Mr. Yawn is a sexually
22 violent predator. He's committed the acts. There's
23 convictions. Based on Dr. Gehle's testimony, he does suffer
24 from that mental abnormality that makes him likely to commit
25 acts of sexual violence. Thank you.

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1 THE COURT: Ms. Wiygul, you may address the jury in
2 your closing.

3 MS. WIYGUL: The statute actually defines the sexually
4 violent predator as someone who's been convicted of a
5 sexually violent offense and suffers from a mental
6 abnormality or personality disorder that makes the person
7 likely to engage in acts of sexual violence if not confined
8 in a secure facility for long-term control, care and
9 treatment. Well, you heard what Dr. Gehle said. It sure
10 isn't about the treatment, it's about the long-term control.

11 Whenever Mr. Yawn pled guilty in front of a judge, that
12 judge had discretion to sentence Mr. Yawn to a sentence that
13 the judge felt was appropriate considering the facts of the
14 case. And the judge sentenced him to ninety days of weekend
15 time and four hundred and ninety-six days time served. Go
16 home, Mr. Yawn. But the State -- it's not even the State.
17 The Attorney General's Office does not believe that the
18 judge was right. They believe that Mr. Yawn should still be
19 locked up.

20 Let's think about how much we can trust our Attorney
21 General's Office. You'll have this back in the jury room
22 with you. You'll see the way the Attorney General's Office
23 describes this Program, an intensive Treatment Program.
24 Even Dr. Gehle admitted that she wouldn't consider two hours
25 a week of group therapy intensive, group therapy that is not

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1 supervised by a doctor, group therapy that is not even
2 supervised by a psychologist.

3 You heard Calvin's sister tell you she's already been
4 in touch with a doctor, right over here on White Horse Road,
5 that treats sex offenders, that is accepting new patients.
6 She's just waiting for him to walk out that door to schedule
7 an appointment.

8 You've heard he has somewhere to live. He has an
9 option of three jobs waiting on him. These are people that
10 know Calvin. These are people that have spent more than two
11 and a half hours with Calvin.

12 Dr. Gehle interviewed Calvin. Other than that, every
13 single piece of information she got was information that was
14 provided by law enforcement or a State agency. And even she
15 admitted he didn't have one disciplinary infraction while he
16 was incarcerated, not one.

17 These are horrible convictions, lewd act on a minor.
18 Just makes you cringe. But that's the only involvement with
19 law enforcement he's ever had.

20 On March 4th of this year the dictionary.com word of
21 the day was oracular. And it stuck in my head because I
22 knew this case was coming up. And I know how these kind of
23 run. And I know how these doctors or psychologists, and she
24 is a doctor. She can't -- she's not a medical doctor, but
25 she is a -- she does have a doctorate in psychology.

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1 Oracular, ambiguous, obscure, of the nature of
2 resembling or suggesting an oracle, giving forth utterances
3 or decisions as if special -- as if by special inspiration
4 or authority.

5 Well, Dr. Gehle is smart. She's not an oracle. She's
6 not a predictor of the future. She has a Static-99, which
7 is an actuarial table where she can do some statistical
8 predictions. But she doesn't have a computer like in
9 Minority Report where they can just see the future and know
10 what's going to happen.

11 I did a lot of research about statistics. And the
12 thing I found that made the most sense to me actually came
13 from the children's version Encyclopedia Britannica for
14 Kids, online version. And it said one of the chief problems
15 with statistics is the ability to make them say what one
16 desires through the manipulation of numbers or graphics.

17 Mr. Yawn has a stable place to live. He has a loving
18 family. He has three daughters, one of which he's never
19 even seen, a step-daughter, who he considers as his and two
20 biological daughters. He's never seen the baby. She's
21 beautiful.

22 He has a job. He has transportation. He has a doctor
23 to go see for sex offender treatment. And this doctor can
24 get to the bottom of what's going on and offer him whatever
25 help he needs, can give him individual counseling, can give

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1 him group counseling if he thinks it'll help. He can write
2 him prescriptions if he thinks there's some type of
3 medication that would benefit him. Dr. Gehle can't do that.

4 Mr. Flores told you during his opening statement that
5 this case was about Greenville County and protecting the
6 citizens of Greenville County. Dr. Gehle doesn't even live
7 in this State. She lives in Georgia. She does evaluations
8 for the Department of Mental Health here. She does
9 evaluations for the State of Georgia. That's her job.
10 She's one person. She's not an oracle. She's fallible just
11 like the rest of us.

12 Mr. Yawn did the time that the court system felt was
13 appropriate. When he is released he will be on probation
14 for five years. Not only will he be on probation, but he
15 will wear an ankle monitor for the rest of his life. For
16 the rest of his life Mr. Yawn will not go to the bathroom
17 without Probation, Parole and Pardon knowing about it. And
18 he accepts that. And he's willing to do what he needs to do
19 to get his life back.

20 Don't buy the idea that the State wants Mr. Yawn to be
21 confined so that he can receive treatment. If you don't
22 think he did long enough in jail, write your Legislature,
23 change the sentences, change the laws, change what crimes --
24 change what sentences go with what crimes, but don't let
25 them do an end-run around our justice system.

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1 Mr. Yawn has done his time. We're asking that you find
2 he is not a suitable person to be confined any longer.
3 We're asking you to send him home.

4 THE COURT: Briefly, in reply?

5 MR. FLORES: Nothing further, Your Honor.

6 THE COURT: All right. Mr. Foreman, ladies and
7 gentlemen, it's now my responsibility to instruct you on the
8 law of the case.

9 Let me remind you that during the course of the trial
10 you and I have had certain duties to perform. As the trial
11 judge it's been my responsibility to preside over the trial,
12 to rule on the admissibility of evidence that's been
13 offered. You're to consider only the testimony that you've
14 heard, the exhibits that have been marked a part of the
15 record and that alone.

16 My job also is to charge you the law that's applicable
17 to the case. It's your duty as jurors to accept the law,
18 apply the law just as I state it to you.

19 You may already have an idea of what the law is in a
20 case like this or even a notion of what the law ought to be
21 in a case like this. If you have such a notion and it's not
22 in agreement with what I now tell you the law is, then, of
23 course, you must abandon such an idea because under your
24 oath you've sworn to accept the law and apply the law just
25 as I state it to you.

JURY CHARGE

1 Every case that's tried in this courtroom before a
2 jury, that jury becomes the sole exclusive judge of the
3 facts in a case. A trial judge can't comment on or make any
4 statement whatsoever about the facts of a case. Our
5 Constitution in South Carolina prohibits that.

6 Since you, the jury, are the sole judges of the facts,
7 you're not to consider anything I've said during the course
8 of the trial, any decisions I make on the admissibility of
9 evidence or, otherwise, anything I say to you now in the
10 course of this instruction to you that I have an opinion
11 about the facts. I don't have an opinion about the facts.
12 That's exclusively up to you and you alone to determine what
13 the facts are.

14 Now, necessarily you're going to need to determine the
15 credibility of witnesses who've testified in the case.
16 Credibility simply means believability. It becomes your
17 duty as jurors to evaluate the evidence, determine which
18 evidence convinces you of its truth.

19 In determining believability of witnesses who testify
20 in the case you can believe one witness over several
21 witnesses, several witnesses over one witness. In your
22 discretion you can believe part of the testimony of a
23 witness and reject the remaining part of the testimony of
24 that very same witness. You can believe the testimony of a
25 witness in its entirety. You can reject the testimony of a

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1 witness in its entirety.

2 You can consider whether any witness had an interest or
3 a bias toward either side. You can consider the demeanor of
4 the witness while on the witness stand. Was the testimony
5 of that witness consistent or inconsistent? How did the
6 testimony of a particular witness stack up with other
7 evidence that you've heard? You and you alone, ladies and
8 gentlemen, are the sole determination -- determiners of what
9 the credibility of witnesses are who have testified in this
10 case.

11 I mentioned to you briefly that the rules of evidence
12 ordinarily would not allow a witness to give an opinion or a
13 conclusion, but there is an exception. And that exception
14 allows a witness who by education or experience has become
15 an expert in some art, or science or profession would be
16 allowed to give an opinion as to the subject that that
17 witness claims to be an expert in and can give a reason for
18 that opinion.

19 And you should, of course, consider any expert opinion
20 given by the witness like any other evidence, give it the
21 weight that you think it deserves. If you decide the expert
22 witness is not based upon sufficient education or experience
23 or you decide that the reasons given by the expert to
24 support that opinion are not sound or that the opinion is
25 outweighed by other evidence, you can disregard that opinion

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1 entirely.

2 An expert witness testimony is to be given no greater
3 weight than that of any other witness simply because that
4 witness is an expert. And you're not required to accept an
5 expert's opinion even though it may be uncontradicted.

6 Now the State has brought this case under what's known
7 as the Sexually Violent Predator Act. The State alleges
8 that the Respondent in this case is a sexually violent
9 predator, seeks to have the Respondent involuntarily
10 committed in a secure facility for long-term control, and
11 care and treatment.

12 The burden of proof is on the State to prove by
13 evidence sufficient to satisfy each of you beyond a
14 reasonable doubt that the Respondent is a sexually violent
15 predator. If the State is able to meet the burden of proof,
16 then you should return a verdict finding that the Respondent
17 is a sexually violent predator. If, on the other hand, the
18 State is unable to meet the burden of proof, then you should
19 return a verdict finding the Respondent is not a sexually
20 violent predator.

21 In most civil cases the petitioner only has the burden
22 of proving that a fact is more likely true than not true by
23 what is often referred to as the preponderance of the
24 evidence or the greater weight of the evidence. However, in
25 this type of case the State's burden of proof is more

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1 powerful than that. It must be proof beyond a reasonable
2 doubt.

3 You may ask, now what is a reasonable doubt in the law?
4 Well, reasonable doubt is the kind of doubt that would cause
5 a reasonable person to hesitate to act. It would be proof
6 that would leave you firmly convinced of the Respondent --
7 finding of the Respondent is a sexually violent predator.

8 Now, ladies and gentlemen, there are very few things in
9 this world that we know with absolute certainty. And the
10 law doesn't require proof that overcomes every possible
11 doubt.

12 If, based upon your consideration of the evidence,
13 you're firmly convinced that the Respondent is a sexually
14 violent predator, then you must return a verdict for the
15 State. If, on the other hand, you think there's a real
16 possibility that the Respondent is not a sexually violent
17 predator, then you must give the Respondent the benefit of
18 the doubt and make a finding that he is not a sexually
19 violent predator.

20 Now, as I said, the burden of proof is on the State.
21 And in order to establish that the Respondent is a sexually
22 violent predator the State must prove beyond a reasonable
23 doubt that the Respondent has been convicted of a sexually
24 violent offense. Now, committing a -- or attempting to
25 commit a lewd act upon a child under the age of sixteen is

JURY CHARGE

1 considered a sexually violent offense under the law of South
2 Carolina.

3 The State must also prove to your satisfaction beyond a
4 reasonable doubt that the Respondent suffers from a mental
5 abnormality or personality disorder that makes him likely to
6 engage in acts of sexual violence if not confined in a
7 secure facility for long-term control, care and treatment.

8 A mental abnormality means that a -- that it's a mental
9 condition affecting a person's emotional capacity or
10 capacity to make conscious choices that makes that person
11 inclined to commit sexually violent offenses. Likely to
12 engage in acts of sexual violence means that a person's
13 tendency to commit acts of sexual violence is such a -- is
14 of such a degree as to pose a menace to the health and
15 safety of others.

16 Now, Mr. Foreman and ladies and gentlemen, there's two
17 possible verdicts that you can find, of course. And I've
18 prepared a verdict form for you. If you find that the State
19 has met its burden of proof beyond a reasonable doubt, then,
20 of course, you would check the appropriate block making that
21 finding of, yes, the burden had been met.

22 If you find that the State has failed in any way to
23 meet the burden of proof, then, of course, your -- you would
24 check the no box and sign your name as foreperson and date
25 it as of the date of your finding, Mr. Foreman.

JURY CHARGE

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1 There's no significance whatsoever in the order in
2 which the two choices are listed. One has to be listed
3 before the other. So you should not take any consideration
4 of the order that the two possible verdicts are listed.

5 Your verdict must be unanimous. All twelve of you must
6 agree upon the verdict. Your verdict can't be based upon
7 sympathy, or passion, or prejudice, or emotion or any other
8 consideration not in evidence in the case.

9 I'll remind you, ladies and gentlemen, you are the fact
10 finders. You're the judges of the fact. I can't comment on
11 or answer any questions you may have about the facts of the
12 case. I certainly could answer any questions that you may
13 have concerning the law. And I'll be glad to go over any of
14 the legal instructions I've given you if you need me to do
15 so.

16 I'm going to ask you at this time to go back to your
17 jury room. Don't discuss the case just yet. We have a
18 final matter of law I need to take care of with the
19 attorneys after which hopefully I'll have the verdict form
20 with the exhibits back for you with instructions to begin
21 your deliberations. But don't start deliberating just yet.
22 I'll excuse you to your jury room at this time.

23 (Whereupon the jury exited the courtroom at 4:30 pm)

24 **THE COURT:** Any exceptions to the charge, from the
25 State?

1 MR. FLORES: Nothing from the State, Your Honor.

2 THE COURT: From the Defense?

3 MS. WIYGUL: Your Honor, I just want to clarify that
4 the Court did consider my proposed jury instruction and
5 chose not to use it, didn't just overlook it?

6 THE COURT: Well, I didn't state when I was talking to
7 them about a yes and a no, but, Ms. Wiygul, I did consider
8 it. And ---

9 MS. WIYGUL: No, Your Honor. I'm referencing the
10 proposed jury charge.

11 THE COURT: Oh, I didn't see a jury charge. I saw a
12 verdict form. But I never saw a jury charge. I'm sorry.

13 (Pause)

14 THE COURT: Does the State have a position on this
15 charge?

16 MR. FLORES: We really take no position at all. It
17 does track the language of -- in the matter of Luckabaugh.
18 I think the charge that you gave was satisfactory. And this
19 language is -- would just be extra at this point.

20 THE COURT: Well, I don't ---

21 MS. WIYGUL: I mean, I think the language clarifies
22 that this commitment is not meant to apply to everyone ever
23 convicted of a sex offense, Your Honor, but only to a very
24 specific subclass.

25 THE COURT: Well, did you give that to us earlier?

1 MS. WIYGUL: Yes, Your Honor. I handed it up when we
2 were handing up everything. That's why that one has holes
3 in it. I gave all my other copies away.

4 THE COURT: Well, I never -- I got your verdict form,
5 but I never -- never received that. Well, I'll charge it.
6 But as far as the verdict form, the -- your proposal, Ms.
7 Wiygul, I think the Act clearly says that the hearing is to
8 determine whether or not he's a sexually violent predator.

9 MS. WIYGUL: Yes, Your Honor.

10 THE COURT: And I think the commitment would be by the
11 Court and not by the jury. So I'll not charge that. I'll
12 call them back just briefly to do that. If you can get all
13 ---

14 MS. WIYGUL: Thank you, Your Honor.

15 THE COURT: Make sure the exhibits are in order. Y'all
16 make sure that what's been marked for ID is not in evidence
17 and what is -- and then we'll just have it all go back to
18 them at one time with the verdict form.

19 (Pause)

20 THE COURT: Bring them back in. And then we'll just
21 hand them that as they go out. Or just lay it on the corner
22 over there and I'll tell the foreman to pick it up. How
23 about that?

24 (Whereupon the jury entered the courtroom at 4:36 pm)

25 THE COURT: Mr. Foreman, ladies and gentlemen, I

1 instructed you as far as the statute and we've got the
2 exhibits ready. I just wanted to make sure that I gave you
3 the full law on the case.

4 And the Sexually Violent Predator Act is enacted by our
5 Legislature. And the purpose is to ensure that those
6 involuntary commitment procedures that are used are only to
7 be used in control of limited subclass of dangerous persons
8 and not broadly subject any dangerous person to what may be
9 an indefinite term.

10 Along with the law that I gave you earlier, we have now
11 got the exhibits ready for you, and I've got the verdict
12 form. So if you would just pick those up as you leave. And
13 when you get back to your jury room you can begin your
14 deliberations. You may be excused at this time, ladies and
15 gentlemen.

16 (Whereupon the jury exited the courtroom at 4:37 pm)

17 (Whereupon the jury began deliberations at 4:37 pm)

18 **THE COURT:** All right. We'll be at ease until we hear
19 from our jury.

20 **MR. FLORES:** Thank you, Your Honor.

21 (Whereupon court was in recess at 4:38 pm)

22 (Whereupon Court's exhibit 1 was marked)

23 (Whereupon court resumed at 5:15 pm)

24 **THE COURT:** Thank you very much. I understand the jury
25 has a verdict. Anything we need to take care of before we

VERDICT OF THE JURY

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1 receive the verdict?

2 MR. FLORES: Nothing from the State, Your Honor.

3 MS. WIYGUL: Nothing from Respondent, Your Honor.

4 THE COURT: If the jury's ready, you can have them come
5 in, Mr. Frazier.

6 (Whereupon the jury entered the courtroom at 5:16 pm)

7 THE COURT: Mr. Foreman, I understand the jury has
8 reached a verdict. Is that correct?

9 MR. FOREMAN: Yes, sir.

10 THE COURT: Is it a unanimous verdict?

11 MR. FOREMAN: Yes, it is.

12 THE COURT: If you would, please, hand the verdict form
13 to the bailiff. All right. Madame Clerk, you may publish
14 the verdict.

15 MADAME CLERK: Your Honor, this is case number 2011-CP-
16 23-2980, In the Matter of the Care and Treatment of Calvin
17 John Yawn, Respondent.

18 Has the Petitioner, the State of South Carolina, proven
19 beyond a reasonable doubt that Calvin John Yawn is a
20 sexually violent predator under the South Carolina Sexually
21 Violent Predator Act? We, the jury, unanimously answered
22 the question as follows; Yes, Calvin John Yawn is a
23 sexually violent predator, signed, Foreperson, David Herron,
24 3/19/2012. If this is your verdict, so say you all. Please
25 signify by raising your right hand.

VERDICT OF THE JURY

1 (Whereupon all jurors raised their right hand)

2 **THE COURT:** Thank you very much, ladies and gentlemen.
3 Is there any other matters we need to take care of with this
4 jury before they're discharged, from the State?

5 **MR. FLORES:** Nothing from the State, Your Honor.

6 **THE COURT:** From Respondent?

7 **MS. WIYGUL:** Nothing from Respondent, Your Honor.

8 **THE COURT:** Mr. Foreman, ladies and gentlemen, thank
9 you very much for your service on this trial. As you may
10 remember from today, we have selected a jury to start a case
11 first thing in the morning. So you're not going to be party
12 to that. We'd love for you to come and observe if you want
13 to tomorrow. If you don't have anything else to do, we'd
14 love to have you here. But you probably have some other
15 matters you'd like to take care of. And that's certainly
16 all right.

17 I need you to call back tomorrow after 12:00 or between
18 twelve and one. I don't know how long the case tomorrow may
19 take. They've indicated it to be a day, maybe less. If we
20 can select a jury to start a case tomorrow afternoon, we
21 want to try to keep you busy so you hopefully won't be here
22 the entire week.

23 But thank you for your service on this case. If you'll
24 call back tomorrow after 12:00 there'll be an instruction on
25 the answering machine for you as to when you need to either

1 call back or when you need to come back in. Thank you very
2 much, ladies and gentlemen. You're dismissed at this time.
3 Everyone else, please remain seated while the jury departs.

4 (Whereupon the jury exited the courtroom at 5:18 pm)

5 THE COURT: All right. Any matters we need to take
6 care of?

7 MS. WIYGUL: Your Honor, we would ask for a judgment
8 notwithstanding the verdict.

9 THE COURT: I believe this was a factual issue for the
10 jury to determine. And your motion is noted for the record,
11 but I respectfully deny your motion, Ms. Wiygul.

12 MS. WIYGUL: Thank you.

13 MR. FLORES: Your Honor, I do have a proposed order of
14 commitment.

15 THE COURT: All right. I'll be glad to review it.

16 (Pause)

17 THE COURT: All right. I find the order is
18 appropriate. So I've signed the order. And the terms of
19 the order will be fulfilled by the local Sheriff's Office
20 until transport can be made.

21 MS. WIYGUL: Thank you, Your Honor.

22 THE COURT: Thank you very much, both of you. And
23 we'll be in touch tomorrow if we need you earlier than
24 Wednesday.

Certificate of Reporter

1

2 I, the undersigned, Susan W. Hudgins, Official Court
 3 Reporter for the Thirteenth Judicial Circuit of the State of
 4 South Carolina, do hereby certify that the foregoing is a
 5 true, accurate, and complete transcript of record of all the
 6 proceedings had and evidence introduced in the trial/hearing
 7 of the captioned case, relative to appeal, in the Circuit
 8 Court for Greenville County, South Carolina, on the 19th day
 9 of March 2012.

10 I do further certify that I am neither of kin, counsel,
 11 nor interest to any party hereto.

April 27, 2012

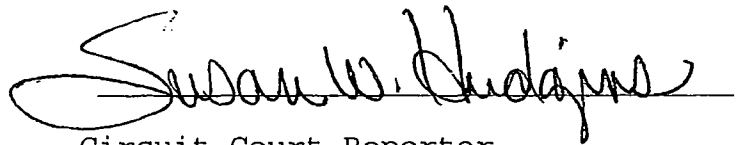
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Circuit Court Reporter

DOCKET NO 2002-GS-04-2539

The State of South Carolina,

ANDERSON

County of _____

COURT OF GENERAL SESSIONS

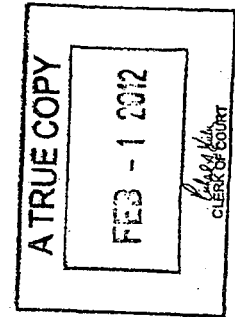
SEP 24 2002 TERM _____

JCD

THE STATE

vs.

Calvin John Yawn



Commitment

2-14-03
W/E heg 2-21-03

WITNESSES

APD/Walters

ARREST WARRANT NO. I156007

ACTION OF GRAND JURY

[Signature] TRUE BILL
DATE 9-24-02
Foreman of Grand Jury

VERDICT

Indictment for

LEWD ACT UPON
CHILD UNDER SIXTEEN
16-15-140 [2468]

Foreman of Petit Jury

Date:

DRUANNE WHITE, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

INDICTMENT FOR
LEWD ACT UPON CHILD
UNDER SIXTEEN
16-15-140 [2468]
SEP 24 2002

At a Court of General Sessions, convened on _____,
the Grand Jurors of ANDERSON County present upon their oath:

LEWD ACT UPON CHILD UNDER SIXTEEN

That Calvin John Yawn did in Anderson County, South Carolina, on or between January 1, 1995, and December 31, 1995, willfully and lewdly commit or attempt a lewd or lascivious act upon or with the body, or its parts, of ^{Minor 3} _____, whose date of birth is _____, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of the child. All in violation of Section 16-15-140, *Code of Laws of South Carolina*, (1976), as amended.

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

SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

) IN THE COURT OF GENERAL SESSIONS
) INDICTMENT/CASE #

STATE v CALVIN JOHN YAWN

20 02-GS-04-2539

AKA: _____
Race/Sex: W M Age: 28

) AW#: 1156007
) Date of Offense: ~~07/18/02~~ 1/1/95 to 12/31/95
) S.C Code: 16-15-0140 CDR Code #: 2468

DOB: _____ SSN: _____

) CASE RESTORED
) SENTENCE: PLEA TRIAL

DL# _____ SID: _____

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



LEWD ACT UPON Child Under 16

in violation of 16-15-140 of the S.C. Code of Laws, bearing CDR Code #: 246181

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

Charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
Plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

Joy C. Davis
Joy C. Davis
Solicitor

Calvin Yawn
Defendant

Robert Deel
Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections,
 County Detention Center, for a determinate term of 8 days/months/years or
 under the Youthful Offender Act not to exceed _____ years and/or pay a fine of \$ _____
provided that upon the service of 90 days/months/years and/or payment of \$ _____
plus costs and assessments as applicable*, the balance is suspended with probation
for 3 months/years and subject of South Carolina Department of Probation.
Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

The Defendant is to be given credit for _____ days/months jail time.

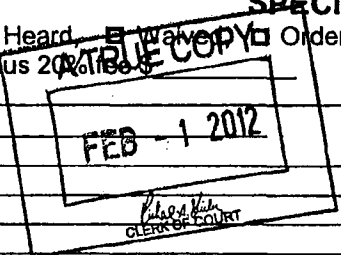
CONCURRENT or CONSECUTIVE to sentences on: 2002-65-04-2736

SPECIAL CONDITIONS:

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

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab, or Job Corps _____
May serve W/E beginning Feb 21, 2003
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be paid in equal, consecutive weekly/monthly
pmts. of \$ 10. beginning 3.14.03
\$ _____ paid to Public Defender Fund.

Payment Terms:
 set by SCDPPPS
Recipient: _____



*Fine.....	\$
14-1-206 - Assessments (107.5%)	\$
14-1-211 (A)(1) Surcharge	\$ <u>100.</u>
14-1-211 (A)(2) Surcharge	\$
56-5-2995 (DUI)	\$
3% County (if Paid in Installments)	\$
Public Defender Fund.....	\$
TOTAL	\$

Other:
Defendant to Attend Sex Offender
Counseling and complete sex offender counseling
Not Paid, from being around children
under 18 yrs

Cathy M. Phillips
Clerk of Court/Deputy Clerk

JUDGE James Hadden Code #: 111311
Sentence Date 2/14/03

Court Reporter Renae Johnson Code #: 111

Time may be served on weekends. NO contact adult

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ARREST WARRANT

I-156007

STATE OF SOUTH CAROLINA

County/ Municipality of

Anderson Municipal Court

THE STATE against

Calvin John Yawn

Address: Home Williamston, SC

Phone: SSN:

Sex: M Race: W Height: 5-9 Weight: 155

DL State: DL #:

DOB: Agency ORI #:

Prosecuting Agency: Anderson Police Department

Prosecuting Officer: Sgt Mike Walters

Offense: LEWD ACTS ON CHILD UNDER 14

Offense Code: 16-15-140

Code/Ordinance Sec: 16-15-140

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

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

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Calvin J. Yawn

on 25 July 02

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Anderson Municipal Court 401 South Main Street Anderson, SC 29624

STATE OF SOUTH CAROLINA

County/ Municipality of

Anderson Municipal Court

Personally appeared before me the affiant Sgt Mike Walters who

being duly sworn deposes and says that defendant Calvin John Yawn

did within this county and state on 7/24/2002 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of Anderson Municipal Court)

In the following particulars:

DESCRIPTION OF OFFENSE: LEWD ACTS ON CHILD UNDER 14

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

During 1995 the exact date and time being unknown to the affiant the defendant fondled the genitals of a victim identified as Minor 3 who was five years old during the time of the offense. During the commission of the offense the defendant resided at The victim gave a statement outlining the offense and the defendant admitted to the offense on the date of July 24, 2002. This offense occurred within the City of Anderson, SC.

Subscribed before me on 7/25/2002

Signature of Issuing Judge (L.S.)

Sgt Mike Walters Signature of Affiant

Affiant's Address 401 South Main Street Anderson, SC 29621

Affiant's Telephone (864)231-2263

STATE OF SOUTH CAROLINA

County/ Municipality of

Anderson Municipal Court

ARREST WARRANT

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

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

on 7/24/2002 defendant Calvin John Yawn

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

County/ Municipality of Anderson Municipal Court) as set forth below:

DESCRIPTION OF OFFENSE: LEWD ACTS ON CHILD UNDER 14

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.) Judge's Address Anderson Municipal Court Anderson, SC 29624

Signature of Issuing Judge (L.S.) Judge's Telephone (864)231-2271

Judge Code: 001 Issuing Court: Magistrate Municipal Circuit

ORIGINAL

2468

A TRUE COPY FEB - 1 2012

WITNESSES

ACSD/Brothers

ARREST WARRANT NO. G869619

ACTION OF GRAND JURY

William R. [Signature]
Foreman of Grand Jury
TRUE BILL
DATE 10-22-02

VERDICT

Foreman of Petit Jury Date:

DOCKET NO. 2002-GS-04-2736

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

OCT 22 2002 TERM

JCD THE STATE

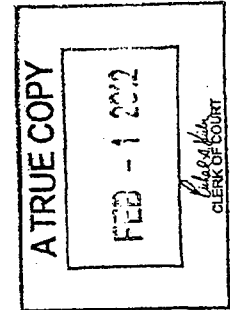
vs.

Calvin John Yawn

Indictment for

LEWD ACT UPON CHILD
UNDER SIXTEEN
16-15-140 [2468]

DRUANNE WHITE, SOLICITOR



Commitment
2-14-03
W/E 2-21-03
beg

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
STATE v CALVIN JOHN YAWN

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE #

AKA: _____

Race/Sex: W M Age: 28

DOB: _____ SSN: _____

DL# _____ SID: _____

20 02-GS-04-2736

A/W#: G869619

Date of Offense: 06/01/00 to 8/31/00

S.C Code: 16-15-0140 CDR Code #: 2468

CASE RESTORED

SENTENCE: PLEA TRIAL



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

Lewd Act Upon Child Under Sixteen

in violation of 16-15-140 of the S.C. Code of Laws, bearing CDR Code #: 2468

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

Charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
Plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

Joy C. Davis
Sollicitor

Calvin J. Yawn
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections,
 County Detention Center, for a determinate term of 8 days/month/years or
 under the Youthful Offender Act not to exceed _____ years and/or pay a fine of \$ _____
provided that upon the service of 90 days/months/years and/or payment of \$ _____
plus costs and assessments as applicable*, the balance is suspended with probation
for 5 months/years and subject of South Carolina Department of Probation.
Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

The Defendant is to be given credit for _____ days/months jail time.

CONCURRENT or CONSECUTIVE to sentences on: 2002-65-04-2539

SPECIAL CONDITIONS:
 RESTITUTION Heard, Waived, Ordered
Total: \$ _____ plus 20% fee \$ _____
Payment Terms: _____
 set by SCDPPPS _____
Recipient: _____
FEB - 1 2002
CLERK OF COURT

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab, or Job Corps _____
May serve W/E beginning Feb 21, 2002
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be paid in equal, consecutive weekly/monthly
pmts. of \$10. beginning 3-14-03
\$ _____ paid to Public Defender Fund.

*Fine.....	\$
14-1-206 - Assessments (107.5%)	\$
14-1-211 (A)(1) Surcharge	\$100.
14-1-211 (A)(2) Surcharge	\$
56-5-2995 (DUI)	\$
3% County(if Paid in Installments)	\$
Public Defender Fund.....	\$
TOTAL	\$

Other: Defendant must attend and complete sex offender counseling. Not and from being arrested while under

Cathy M. Phillips
Clerk of Court/Deputy Clerk

JUDGE [Signature] Code #: 11311 1511

Court Reporter Renee Jollison Code #: 1111

Sentence Date 2/14/03 unless accepted by adult

Time may be used on in contact w/ time.

ARREST WARRANT

G-869619

STATE OF SOUTH CAROLINA

County/ Municipality of

Anderson

THE STATE

against

Calvin John Yawn

Address: _____

Phone: _____ SSN: _____

Sex: M Race: W Height: _____ Weight: _____

DL State: _____ DL #: _____

DOB: _____ Agency ORI #: 004600

Prosecuting Agency: BCSO

Prosecuting Officer: Brothers, Jami

Offense: Lewd Act Upon Child Under

Sixteen Offense Code: 2468

Code/Ordinance Sec. 16-15-140

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused is to be arrested and brought before the court to be dealt with according to law.

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Calvin John Yawn on 9-10-02

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Summary Court

Anderson, SC

9-9-02

STATE OF SOUTH CAROLINA

County/ Municipality of

Anderson

AFFIDAVIT

Form Approved by S.C. Attorney General July 26, 1990 SCCA 518

Personally appeared before me the affiant Jami Brothers who being duly sworn deposes and says that defendant Calvin John Yawn did within this county and state on 6/1/00 - 8/31/00 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of _____) in the following particulars:

DESCRIPTION OF OFFENSE: Lewd Act Upon Child Under Sixteen

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

That the defendant did between 6/1/00 - 8/31/00 touch a nine years old male child's genitals with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself and the child. This offense occurred at the River Forks Recreation Area of Hartwell Lake in Anderson County.

Sworn to and subscribed before me on 8-14-02

Signature of Issuing Judge Roadwith (L.S.)

Signature of Affiant Jami Brothers
Affiant's Address 305 Camson Rd
Anderson, SC
Affiant's Telephone (864) 222-4604

STATE OF SOUTH CAROLINA

County/ Municipality of

Anderson

2002 - 38002

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on 6/1/00 - 8/31/00 defendant Calvin John Yawn did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of _____) as set forth below:

DESCRIPTION OF OFFENSE: Lewd Act Upon Child Under Sixteen

16-15-140

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge Roadwith (L.S.)

Signature of Issuing Judge _____
Judge Code: 733

Judge's Address 107 S. Main St.
Anderson, SC 29622
Judge's Telephone 864-266-4156
Issuing Court: Magistrate Municipal Circuit

ORIGINAL

132

133

WITNESSES

Cheryl Cromartie

(Signature)

Greenville County Sheriffs Office

6/17/2009

ARREST WARRANT NUMBER

1478458

ACTION OF GRAND JURY

TRUE BILL

(Signature)

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-23-06921

AMENDED INDICTMENT LBP

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

October TERM 2009

THE STATE

vs.

CALVIN JOHN YAWN

Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140



Printed Copy
Paul B. Waldman
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 1-4-12

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AMENDED INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on **OCT 19 2010** the Grand Jurors of Greenville
County present upon their oath:

That CALVIN JOHN YAWN did in Greenville County, between the 1st day of January, 2009 and 30th day of
April, 2009, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious
act upon or with the body, or its parts, ofMin a child under the age of sixteen years, with the intent of arousing,
appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of
§16-15-140 of the South Carolina 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.

William B. Pascel
SOLICITOR

COUNTY OF Greenville
STATE VS.
Calvin John Yawn

INDICTMENT/CASE#: 2009GS2306921
A/W#: 1478458
Date of Offense: 1/1/2009
S.C. Code § : 16-15-140
CDR Code #: 2468

AKA:
Race: W Sex: M Age: 36
DOB: SS#:
Address:
City, State, Zip:
DL#: SID#:

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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

ATTEST:
Paulette Leigh B. 69114 SC Bar# *Calvin Yawn* Defendant *J. S. ...* Attorney for Defendant 8895 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 3 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 496 days time served.
 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 _____

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: _____

Recipient: _____
*Fine:
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ca \$
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
§ 44-53-450(C) (Conditional Discharge) \$350 \$
3% to County (if paid in installments) \$
TOTAL \$

Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition
 Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk *Paul B. Winkens*
Court Reporter: *T. Johnson*
SCCA/217 (06/2010)

Presiding Judge _____
Judge Code: 2171
Sentence Date: 2-2-2011

P. ...

5031
7-16-09
ARREST WARRANT
178458
STATE OF SOUTH CAROLINA
County of Greenville Municipality of

THE STATE 09-64086
against

Calvin John Yawn
Address:

Phone: SSN:
Sex: M Race: W Height: 5 11 Weight: 155
DL State: SC DL #: I B
DOB: Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office
Prosecuting Officer: Cheryl Cromartie - 0086

Offense: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

Offense Code: 2468
Code/Ordinance Sec.: 16-15-0140

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of _____
The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Calvin John Yawn
on 6/17/09

[Signature] 532/167
Signature of Constable/Law Enforcement Officer

RETURN WARRANT 2009 JUN 16 9 11 AM '09
City Magistrate 2
4 Mc Gee Street Room 116-B
Greenville, SC 29601
Greenville County Sheriffs Office
Received

ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
Greenville)

AFFIDAVIT

ORIGINAL Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

Personally appeared before me the affiant Cheryl Cromartie who
being duly sworn deposes and says that defendant Calvin John Yawn
did within this county and state on or about 01/01/2009 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of Greenville)
in the following particulars:

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

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

Affiant has a statement in possession implicating the defendant in the above named offense. The victim an 8 year old male states the
defendant on more than one occasion touched his penis with his hand while the victim visited his aunt. This incident occurred in
Greenville County.

Signature of Affiant

[Signature]

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
Greenville)

Affiant's Address 4 Mcgee Street
Greenville, SC 29601-
Affiant's Telephone (864)467-4122

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/1/2009 defendant Calvin John Yawn
did violate the criminal laws of the State of South Carolina (or ordinance of
 County/ Municipality of Greenville) as set forth below.

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

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me
on 06/16/2009

Signature of Issuing Judge (L.S.))
[Signature])
James E. Hudson)
Judge Code: 5031)
Judge's Address 4 Mcgee Street, Room 116-B
Greenville, SC 29601-
Judge's Telephone (864)467-5302
Issuing Court: Magistrate Municipal Circuit

ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL

137

WITNESSES

J. Middleton *JT*

Greenville County Sheriffs Office

3/19/2009

ARREST WARRANT NUMBER

M176049

ACTION OF GRAND JURY

TRUE BILL

Ann Sporett

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-23-

LBP

✓ The State of South Carolina

004500

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2009 *B*

THE STATE

vs.

CALVIN JOHN YAWN

✓ Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140



and B. Winkler
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on

MAY 04 2010

the Grand Jurors of Greenville

County present upon their oath:

That CALVIN JOHN YAWN did in Greenville County, on or about the 19th day of March, 2009, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of Mino a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina 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.

Devin B. Pasuthi
SOLICITOR

B STATE OF SOUTH CAROLINA)
 COUNTY OF Greenville)
 STATE VS.)
 Calvin John Yawn)
 AKA:)
 Race: Sex: M Age: 36)
 DOB: SS#:)
 Address:)
 City, State, Zip:)
 DL#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS2304508
 A/W#: MI76049
 Date of Offense: 3/19/2009
 S.C. Code §: 16-15-140
 CDR Code #: 2468

SENTENCE SHEET

Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

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

ATTEST: Leigh B. Paoletti 09114 Calvin Yawn J. Beamer 8895
 Paoletti, Leigh B. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 10 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 time served days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*, the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. *479 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 PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____
 Set by SCDPPPS _____
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling

Recipient: _____
 *Fine:

§ 14-1-206 (Assessments 107.5 %)		\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$	100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$	
§ 56-5-2995 (DUI Assessment)	\$12	\$	
§ 56-1-286 (DUI Breath Test)	\$25	\$	
Proviso 47.9 (Public Def/Prob)	\$500	\$	
§ 14-1-212 (Law Enforce. Funding)	\$25	\$	25.00
§ 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 (SCCJA Surcharge)	\$5	\$	5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$	
3% to County (if paid in installments)		\$	
TOTAL		\$	

Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ 500.00 paid to Public Defender Fund
 Other: _____

* no contact directly or indirectly
 with minors. (unsupervised)
 Condition Discharge, § 44-53-450(C) requires
 \$350 be paid to the Clerk prior to case disposition
 Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk Paul B. Wickens
 Court Reporter: J. Johnson
 SCCA/217 (06/2010)

Presiding Judge C. V. Ryan
 Judge Code: 2070
 Sentence Date: 10-6-10

Probation begins upon release from pending charge

ARREST WARRANT

M-176049

5531
4-1-09

STATE OF SOUTH CAROLINA

County/ Municipality of

Greenville

THE STATE 09-046891
against

Calvin John Yawn

Address:

Phone: _____ SSN: 7
Sex: M Race: W Height: 5 11 Weight: 155

DL State: SC DL #: _____

DOB: _____ Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: J Middleton - 0988

Offense: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

Offense Code: 2468

Code/Ordinance Sec: 16-15-0140

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of

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

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Calvin Yawn on 3/19/09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: WEINMUELLER
West Greenville Summary Court
6247 White Horse Road
Greenville, SC 29611

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA)

County/ Municipality of)

Greenville)

Personally appeared before me the affiant J Middleton who being duly sworn deposes and says that defendant Calvin John Yawn did within this county and state on or about 03/19/2009 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Greenville) in the following particulars:

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

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

THE AFFIANT HAS A WRITTEN STATEMENT FROM THE VICTIM, Minor 2 IN THE PRESENCE OF HIS MOTHER, REBECCA STYLES, STATING THAT THE DEFENDANT DID, WITHOUT CONSENT, TOUCH THE VICTIM'S GENITAL AREA. THE VICTIM IS 8 YEARS OLD. THIS OFFENSE OCCURRED IN GREENVILLE COUNTY, SC.

Signature of Affiant

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
Greenville)

Affiant's Address 4 Mcgee Street
Greenville 29601-
Affiant's Telephone (864)271-5210

ARREST WARRANT

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

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

on or about 3/19/2009 defendant Calvin John Yawn

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

County/ Municipality of Greenville as set forth below:

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

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

Sworn to and subscribed before me)

on 03/19/2009) Judge's Address _____

Darrell Fisher (L.S.)) Judge's Telephone _____

Darrell Fisher)

Judge Code: 5068) Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

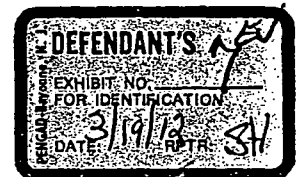
GREENVILLE COUNTY SHERIFFS OFFICE
MAR 23 2009
COMPUTER ENTERED

Sexually Violent Predator

In 1998, the South Carolina General Assembly passed the Sexually Violent Predator Act, which provides for involuntary civil commitment of a mentally abnormal and extremely dangerous group of sexual predators. The Legislature found there is a significant likelihood these individuals will engage in repeated acts of sexual violence if their conditions go untreated. Individuals committed under the Act are confined to the custody of the South Carolina Department of Mental Health, and held in a separate and secure facility for long-term control, care and treatment. The South Carolina Attorney General's Office has two attorneys assigned to handle all cases under the Act.

The Sexually Violent Predator commitment process begins at least 270 days prior to a convicted sex offender's release from incarceration in the South Carolina Department of Corrections, the South Carolina Department of Mental health, or the South Carolina Department of Juvenile Justice. If there is probable cause to believe the offender is a sexually violent predator, a judge may order a psychiatric evaluation of the offender to be completed by a court appointed evaluator. These offenders found to be sexually violent predators are committed to the South Carolina Department of Mental Health in an intensive treatment program, and their mental status is reviewed annually to determine if they are safe to be at large. If released from treatment, the offenders must register as a sexually violent predator on the South Carolina Sex Offender Registry for life, and their registration and photograph must be updated every 90 days.

The public is encouraged to check the Sex Offender Registry often to identify the sex offenders living in the area. The Registry specifically indicates whether an offender is a sexually violent predator under the Act. Also, it is important to notify local law enforcement if a registered Sex Offender/Predator is seen loitering near places children or other potential victims congregate.



STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-23-2980

IN THE MATTER OF THE CARE
AND TREATMENT OF
CALVIN JOHN YAWN,
RESPONDENT.

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

2011 JUL 28 A 9:32

FILED-CLERK OF COURT
GREENVILLE CO. S.C.

Pickens

This matter comes before me on petition of the State of South Carolina for an order requiring the Respondent, Calvin John Yawn, to submit to an examination and to be detained in an appropriate secure facility pending a trial, pursuant the Sexually Violent Predator Act (S.C. Code Ann. Sections 44-48-10 *et seq.*). A Probable Cause hearing was held on June 28, 2011 in ~~Greenville~~ Pickens; the State was represented by Assistant Attorney General Lloyd V. Flores, Jr., and the Respondent was personally present and represented by Elizabeth P. Wiygul, Esquire. Mr. Yawn waived venue from Greenville County to Pickens County for purposes of this probable cause hearing.

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

THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED:

That the Respondent shall be:

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

The court-ordered examination shall be requested by the Office of the Attorney General of South Carolina and scheduled by the examining facility within 30 days from the date of this order. The Respondent is to arrive at the examining facility at the time established by confirmed appointment with the staff of the examining facility. The Respondent continues under jurisdiction of this Court.

The qualified expert appointed by the Court at this Probable Cause hearing to examine the Respondent is Marie Gehle, Ph.D.

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

AND IT IS SO ORDERED.



The Honorable G. Edward Welmaker,
Presiding Judge for the Thirteenth
Judicial Circuit Court of Common Pleas

June 28, 2011
~~Easton~~, South Carolina
Pickens

A Certified Copy
Paul B. Wickens
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 7/8/11

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 IN THE MATTER OF THE CARE)
 AND TREATMENT OF)
 CALVIN JOHN YAWN,)
 RESPONDENT.)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

CASE NO. 2011-CP-23-2980
 ORDER OF COMMITMENT

FILED
 CLERK OF COURT
 THIRTEENTH JUDICIAL CIRCUIT
 GREENVILLE, S.C.

2012 MAR 22 P 2:42

GW

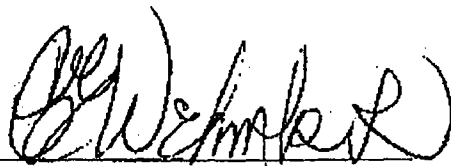
The trial of this case was held in the County of Greenville in the Court of Common Pleas the week of March 19, 2012. A jury of citizens from Greenville County heard this case pursuant to a request for a jury trial filed by the State. Assistant Attorney General Lloyd V. Flores, Jr., represented the State. Elizabeth P. Wiygul, Esquire, represented the Respondent. The jury having heard the presentation of the evidence made the following findings of fact pursuant to South Carolina Code Sections 44-48-90 and 44-48-100:

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

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

- (a) Respondent is committed to the Department of Mental Health for his long-term control, care and treatment;
- (b) Respondent is to continue to be detained at the Greenville 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.



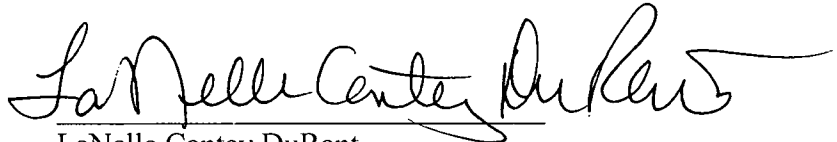
The Honorable G. Edward Welmaker,
 Chief Administrative Judge for the Thirteenth
 Judicial Circuit Court of Common Pleas

3-19, 2012
 Greenville, South Carolina

CERTIFICATE OF COUNSEL FOR APPELLANT

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

February 27th, 2013



LaNelle Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT