

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Clifton B. Newman, Circuit Court Judge

Appellate Case No: 2014-000235

IN THE MATTER OF THE CARE AND TREATMENT OF KEVIN NIXON,
APPELLANT

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
IN THE MATTER OF THE CARE)
AND TREATMENT OF)
KEVIN NIXON,)
RESPONDENT.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO. 2006-CP-26-6311

ORDER OF CONTINUED COMMITMENT

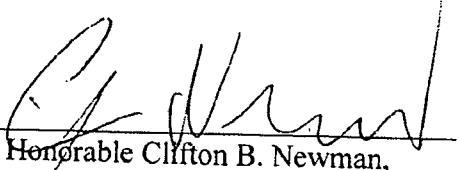
The trial of this case was held in the County of Horry in the Court of Common Pleas the week of January 27, 2014. A jury of citizens from Horry County heard this case pursuant to a request for a jury trial filed by the State. Assistant Attorney General Nicole T. Wetherton represented the State. Charles Brooks, 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 44-48-10 through 44-48-110:

The State has proven beyond a reasonable doubt that Respondent's mental abnormality or personality disorder remain such that he is not safe to be at large and, if released, is likely to engage in acts of sexual violence.

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

Respondent is to remain committed to the Department of Mental Health for his long-term control, care and treatment.

AND IT IS SO ORDERED.


The Honorable Clifton B. Newman,
Presiding Judge for the Fifteenth Judicial Circuit
Court of Common Pleas

Jan 27, 2014
Conway, South Carolina

FILED
HORRY COUNTY
2014 FEB - 4 AM 8:14
JELANIE HUGGINS-WARD
CLERK OF COURT

1 STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**
2 COUNTY OF HORRY) CASE NO: 2006-CP-26-06311

3 -----
4 **B E F O R E:** The Honorable Clifton Newman
5 January 27, 2014
6 -----

7 STATE OF SOUTH CAROLINA,
8 Plaintiff,
9 vs.
10 KEVIN NIXON,
11 Defendant/Respondent.

 **ORIGINAL**

12 -----
13 **APPEARANCES:**

14
15 Nicole Thomas Wetherton, Esq.
For the State (Attorney General's Office)

16
17 Charles Thomas Brooks, III, Esq.
For the Defendant
18
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20
21
22
23
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(NO EXHIBITS MARKED OR ENTERED)

P R O C E E D I N G S

1
2 THE COURT: How is everybody?

3 MR. BROOKS: Good, Judge.

4 THE COURT: Ready to roll?

5 MR. BROOKS: I wanted to -- I think we told
6 you my client -- I had a dispute for him, but my
7 client wants to stay in his SVP garb, I guess that is
8 part of our strategy. I wanted to let you know so you
9 wouldn't be shocked, because generally in criminal
10 trials we would like to have people clothed
11 differently, but I wanted it to be to your attention.

12 THE COURT: Not a problem with me. Anything
13 from the State on that issue?

14 MS. WETHERTON: Obviously, we'll leave it at
15 your discretion. It could cause -- I guess I don't
16 want an issue where it causes prejudice to the State,
17 the argument that he's incarcerated versus that he's
18 in the program for treatment.

19 THE COURT: All right. Good morning.

20 MR. NIXON: Good morning.

21 MR. BROOKS: I had other pretrial motions to
22 bring before, Judge.

23 THE COURT: Mr. Nixon, do you want to wear
24 what you have on through the case, throughout the
25 case?

1 MR. NIXON: Yes, sir.

2 THE COURT: He has the right to do that if
3 that is what he wants to do. He's in jail, so it is
4 not a secret to anyone.

5 MR. BROOKS: I don't think the Attorney
6 General wants it to be called "jail."

7 THE COURT: It's not jail, it's --

8 MS. WETHERTON: Civil commitment.

9 MR. BROOKS: My client's position is it is
10 like jail, and that is what she was talking about as
11 far as --

12 THE COURT: I understand. It is civil
13 commitment. It is in the gray area. He can't go home
14 if he wants to.

15 MS. WETHERTON: Correct.

16 MR. BROOKS: Correct, Your Honor.

17 THE COURT: All right. What else do we need
18 to talk about?

19 MR. BROOKS: The other thing I confirmed with
20 my client, he wants us to ask the Court for a
21 continuance in this matter. The basis of which is he
22 wants to see if he can try to find another expert for
23 a second independent evaluation. There was another
24 lawyer that handled the case at the probable cause for
25 the purpose of the annual review post-commitment

1 hearing. There was an independent evaluation done
2 prior to that by Dr. Thomas Martin. Unfortunately,
3 that is who I use on a lot of these cases, and I did
4 confer with Dr. Martin again once I got the case. As
5 a matter of fact, we had -- we conferred on it last
6 week. Ms. Wetherton was there as well on a separate
7 case, and I conferred with Dr. Martin about Mr.
8 Nixon's case, and he basically reiterated to me that
9 he could not help us in this particular situation for
10 the purposes of Mr. Nixon. I told Mr. Nixon that, and
11 he wanted me to raise that issue to the Court.

12 THE COURT: What is the State's position?

13 MS. WETHERTON: At this time, we would object
14 to the request for the continuous. This case was
15 scheduled for trial for over two months. The State's
16 doctor, she's from Florida. You know, the State has
17 incurred costs to have her come up here. In addition,
18 there was a consent order for an independent
19 evaluation that was entered in this case, and he did
20 -- was reviewed by a defense doctor and he couldn't
21 help them. So at this time we ask that the request
22 for continuance be denied.

23 THE COURT: So you've had -- Dr. Martin, was
24 he the doctor per consent?

25 MS. WETHERTON: Yes, Your Honor.

6

1 MR. BROOKS: Yes. The answer to your question
2 basically is, yes. The respondent in this type of
3 situation, they are entitled to an independent eval,
4 and, personally, when I have cases, I use him as a
5 part --

6 THE COURT: He's your preference to do the
7 independent evaluation?

8 MR. BROOKS: Right. But I wasn't on the case
9 when Dr. Martin got the case. Once I got it, I went
10 back to him and Mr. Honeycutt, who had the case before
11 I did, told me that Dr. Martin indicated that he
12 couldn't help him, and Ms. Wetherton indicated that as
13 well. I spoke with Dr. Martin personally last week
14 when we were in a separate case, and Ms. Wetherton was
15 there as well. He basically said that is true,
16 Charles, I have seen Mr. Nixon and I can't be of help
17 for you on this case.

18 THE COURT: All right. Case is scheduled,
19 case is ready to go, your witness didn't pan out, but
20 it is not a situation where you can continue fishing
21 until you get one who might say the right thing or
22 might be positive. The State still has the burden of
23 proof beyond a reasonable doubt. I haven't heard any
24 basis to grant a continuance at this point. Do you
25 have anything else to add on that, Mr. Nixon?

1 MR. NIXON: One of the main reasons I was
2 asking for a continuance is because me and Mr. Brooks
3 have not had a chance to really go over my case. He
4 just stated that it was given to him in the middle of
5 the trial (sic), and the reason why our trial has not
6 come to court is because our trial was during the
7 holidays and, plus, Dr. Domino, the one that did my
8 evaluation, she had put in for a continuance also
9 because she had a trial she had to see about in
10 Florida, so that is why one of those things was put
11 off. The holidays is another reason why the court --
12 my trial case was put off. So it wasn't like from
13 lack of trying, it is just the way the system was
14 working at the time.

15 We're not really prepared for this, me and
16 him, because this is the first face-to-face I've
17 actually had with Mr. Brooks and previously one phone
18 call.

19 THE COURT: All right. Mr. Brooks.

20 MR. BROOKS: Judge, I'm sure you have some
21 familiarity with taking court-appointed cases, and
22 this is a sexual violent predator case. I've done
23 countless, and I'm sure Ms. Wetherton, the attorney
24 general's office, probably has a better idea of the
25 number that I've handled, but basically it is my

1 practice -- when I took over the case, he already had
2 a probable cause hearing that bound him over for
3 trial. I got all of the reports and, Judge, basically
4 the strategy is that it has been my experience that
5 these cases are basically expert cases. It is not a
6 case about whether or not the individual did it, it is
7 about a case whether or not the individual will do it
8 again.

9 So I've got all of the reports of Dr. Domino,
10 as well as Dr. Swan, progress notes, I talked to him on
11 the phone about what the situation is facing us and, of
12 course, I did spend quite a bit of time this morning
13 going back through that. I told him the ins and outs.
14 I have submitted to you -- I believe I did that either
15 Thursday or Friday via E-mail to your clerk -- that
16 there is not much opposition that I had to the things
17 that Ms. Wetherton submitted as far as voir dire and
18 verdict form, witness list. The only thing I added was
19 potentially my client would testify.

20 I have indicated to him my feelings. As far
21 as Dr. Martin is concerned, he is about as anti-SVP as
22 you can get, he, having educated me a lot on how this
23 stuff works within the confines of the expert.

24 I don't know what else, you know, preparation
25 I can do other than if there was some other doctor out

1 there that could render a more favorable report for Mr.
2 Nixon.

3 As far as my preparation, I'm sure
4 Ms. Wetherton will say Mr. Brooks does all of these
5 cases, he can do them in his sleep. I don't know if
6 that is the argument she's going to make, but obviously
7 that is my client's position, which I totally
8 understand and I totally respect, but I have to be
9 truthful and candid.

10 THE COURT: You are prepared to go forward in
11 defending, Mr. Nixon?

12 MR. BROOKS: If the Court rules that way, yes,
13 I am.

14 THE COURT: Anything else, Mr. Nixon?

15 MR. NIXON: I just -- it just feels, to me, in
16 my honest opinion, that we are not really prepared for
17 a trial yet. We haven't had time to get
18 cross-examination or nothing like that.

19 THE COURT: Ms. Wetherton, anything you wish
20 to interject or add?

21 MS. WETHERTON: Yes, Your Honor. I've spoken
22 to Mr. Brooks regarding the case, and it was scheduled
23 for over a couple of months. The issue with
24 Dr. Domino simply is not true. The reason why --
25 there was a probable cause hearing scheduled in June.

1 I made it to Turbeville and got a phone call from
2 Judge Culbertson's law clerk that there was no court
3 reporter that day, so that is why it was postponed for
4 October.

5 She testified at the hearing, and her report
6 simply states, that he is not ready, and that is as for
7 all five reports and an evaluation, that he's not ready
8 to be released from the program. He already had a
9 review. Mr. Brooks and I have discussed this case at
10 length. I provided records. I know he's up-to-date on
11 this case because he and I talked about the facts and
12 the circumstances of this case. Mr. Brooks has tried a
13 lot of cases. He probably has tried more of these
14 cases, to be honest, than I have. So I believe he is
15 ready and prepared, and he has worked on this case.

16 THE COURT: All right. Anything else?

17 MS. WETHERTON: Nothing else.

18 THE COURT: Anything further?

19 MR. BROOKS: Not on this issue, but I have
20 another issue to raise before the Court.

21 THE COURT: All right. The case is ready to
22 be presented. I'm here, you all are here, the jury is
23 here, the expert is here, the case has been pending
24 for a significant amount of time. It is important
25 that these cases be heard. Mr. Brooks indicates that

1 he's ready. There will be -- on the question of
2 whether or not there is an adequate amount of time to
3 prepare for cross-examination, you'll have additional
4 opportunity to confer during the course of the day.
5 We're going to proceed with the hearing.

6 MR. BROOKS: Next pretrial motion we wanted to
7 raise, Judge, is you've heard a little bit of talk
8 about Mr. Nixon was first evaluated by Dr. Domino
9 within the Department of Mental Health. She issued a
10 report, that is the report that was used. She's the
11 one that testified at the hearing before Judge
12 Culbertson. Now, at trial my client -- the State has
13 a different expert, Dr. Amy Swan, who is going to
14 testify in regards to this case. My client -- our
15 position is that she should be excluded because
16 they've already got one expert that truly did an
17 evaluation and, therefore, Dr. Swan should not be
18 allowed to testify in regards to this particular case
19 as it relates to Mr. Nixon. At the probable cause
20 hearing we were operating off of Dr. Domino,
21 Dr. Domino is the one that testified, and so they
22 should be restricted to just using Dr. Domino.

23 THE COURT: All right. Ms. Wetherton.

24 MS. WETHERTON: If I could explain what
25 happened. What happened in this case is Dr. Domino

1 issued a report. She did -- every year they have to
2 come up for an annual review. His annual review came
3 up in 2012. This is before I came to the office. The
4 case sat, for some reason, and when I came onboard we
5 did a consent order for evaluation. He was reviewed
6 for an independent evaluation. Dr. Martin couldn't
7 help him. We set it for a probable cause hearing.
8 Dr. Domino did not recommend that he be released. She
9 came to court and she testified.

10 In the meantime, every year they are reviewed
11 by the Department of Mental Health. His review came up
12 again the next year, which is Dr. Swan. Dr. Swan, one
13 of the things she'll testify to is she has to review
14 all of the previous evaluations, and so she depended on
15 the report of Dr. Domino to move forward.

16 What happens is the day of this trial -- it is
17 based on whether or not today he is fit to be released,
18 and she's the one with the most recent and up-to-date
19 information as to what his current mental state is and
20 whether or not he can be released. In addition, also,
21 in the pretrial brief when I quoted you the statute,
22 once a trial is scheduled, the Attorney General's
23 Office could retain an expert to review him again. We
24 didn't do that because Dr. Swan has the most recent
25 up-to-date information, but we would be entitled to

1 another expert anyway.

2 THE COURT: All right. Anything else?

3 MR. BROOKS: Beg the Court's indulgence.

4 (Whereupon, Mr. Nixon and Mr. Brooks confer.)

5 MR. BROOKS: Your Honor, we stand by what we
6 presented to the Court.

7 THE COURT: The State is entitled to present
8 experts, and they are not restricted based on the
9 desire of the defense. I deny the motion.

10 MS. WETHERTON: Thank you, Your Honor.

11 THE COURT: The State has the burden of proof
12 beyond a reasonable doubt, and as you indicated in
13 your earlier argument, this is an expert-driven
14 matter. Of course testimony is important, but to a
15 great extent expert opinion is critical because we're
16 dealing with medical issues, and the State has a right
17 to present expert testimony. Yes, sir.

18 MR. BROOKS: One last thing, Judge. I was
19 explaining to my client -- I can't remember the actual
20 statute, but Ms. Wetherton called it out, but I
21 explained to my client that if we don't get a
22 favorable outcome from the jury, that the State gets
23 to, basically, skip a year before he has an additional
24 annual review, and I was explaining that to my client.

25 THE COURT: What statute is that?

1 MS. WETHERTON: 44-48-130.

2 THE COURT: 44-48-130. Read that statute to
3 us, if you have it.

4 MS. WETHERTON: Sure. I do. It says, If the
5 person has previously filed a petition for release
6 without the approval of the director of the Department
7 of Mental Health, and the Court determines upon either
8 review that the Petitioner, or following a hearing,
9 that the Petitioner's petition was frivolous or that
10 the Petitioner's condition has not so changed, the
11 Petitioner could continue to be a threat, and if
12 released would commit acts of sexual violence, the
13 Court must deny the subsequent petition unless the
14 petition contains facts upon which a court could find
15 the condition of the Petitioner has so changed that a
16 hearing was warranted. Upon receipt of a first or
17 subsequent petition from a committed person without
18 the director's approval, the Court must, whenever
19 possible, review the petition and determine if the
20 petition is based upon frivolous grounds, and if so,
21 must deny a Petitioner without a hearing.

22 So in this situation he's granted a release,
23 and the Department of Mental Health has not authorized
24 him to petition for his release, so we're going through
25 a release trial. Our position is that, pursuant to the

1 statute, that if he again requests his right to a
2 hearing at his next annual review and that his
3 condition has not so changed pursuant to the Department
4 of Mental Health, that we file the 130 Petition.

5 THE COURT: All right. None of that has any
6 bearing on today's trial?

7 MS. WETHERTON: No. It's just that that's
8 what would happen if he would lose today.

9 MR. BROOKS: I just wanted that for the
10 record, because I was explaining that to my client and
11 I wanted to make sure that he was fully aware of that,
12 and the State's intent on exercising that should the
13 outcome of the case not be favorable to my client.

14 THE COURT: The State's intent would be what?

15 MR. BROOKS: That, basically, he would skip a
16 year.

17 MS. WETHERTON: When his next annual review
18 would come up, the end of next year, we would file a
19 130 Petition.

20 THE COURT: Saying?

21 MS. WETHERTON: That it was frivolous because
22 the condition hasn't changed since the date of the
23 trial. The Department of Mental Health may say that
24 he made progression and they may recommend his
25 release, then that is a completely different

1 situation.. Outside of the Department of Mental Health
2 recommending the release and saying his condition did
3 not change since the date of this trial, he would
4 skip, essentially, a year, the next annual review.

5 THE COURT: All right. Where is our jury, by
6 the way?

7 THE BAILIFF: In the waiting room outside of
8 the hallway.

9 THE COURT: Okay.

10 MR. BROOKS: My client understands and he
11 still wishes to go forward.

12 THE COURT: Is that correct, Mr. Nixon?

13 MR. NIXON: Yeah. Yes, sir, it is.

14 THE COURT: You think you fully understand the
15 statute that the Attorney General read?

16 MR. NIXON: Yeah, I understand what she read,
17 Your Honor.

18 THE COURT: All right. Are you ready to
19 proceed?

20 MS. WETHERTON: Yes, Your Honor.

21 MR. BROOKS: Yes, sir.

22 THE COURT: Of course we're all on high
23 weather alert down here and wondering what is what.
24 The Court is on the same schedule as the county when
25 it comes to closures of buildings and weather delays

1 and the like, so we'll see what happens time wise. We
2 may have to stay late today. All right. Let's bring
3 the jury.

4 (Whereupon, the prospective jury panel enters.)

5 THE COURT: Good morning, ladies and
6 gentlemen. I'm Clifton Newman. My law clerk next to
7 me Simone Martin. You have been sent up here for jury
8 selection in the case that we are to try today. The
9 case is in the matter of The Care and Treatment of
10 Kevin Nixon, Respondent. I'm going to ask you all a
11 number of questions to assist the counsel with the
12 jury and the Court with the jury selection. First,
13 I'll have the parties introduce themselves for the
14 Petitioner and the State.

15 MS. WETHERTON: Thank you. Good afternoon.
16 I'm Nicole Wetherton and I'm Assistant Attorney
17 General with South Carolina.

18 THE COURT: And with you, Ms. Wetherton?

19 MS. WETHERTON: With me today is Dr. Amy Swan,
20 a forensic psychologist with the Department of Mental
21 Health.

22 THE COURT: Thank you.

23 MR. BROOKS: My name is Charles Brooks. I'm
24 an attorney and I practice in Sumter. This is my
25 client, Kevin Nixon.

1 THE COURT: Mr. Nixon, if you will stand as
2 well. Thank you. Does any member of the jury panel
3 know or know of Kevin Nixon? If you know Mr. Nixon or
4 know of him, please stand.

5 Mr. Nixon has been convicted of a sex offense,
6 and he has been committed to the Department of Mental
7 Health for long-term care and treatment under the
8 Sexually Violent Predator Treatment Program. Does any
9 member of the jury panel know anything about the sexual
10 offense or offenses Mr. Nixon was convicted of; if so,
11 please stand?

12 JUROR: I read an article in the papers
13 shortly about it.

14 THE COURT: Your juror number, please, and
15 your name.

16 JUROR: 256.

17 THE COURT: Your name is.

18 JUROR: William Meekins.

19 THE COURT: Mr. Meekins, would that affect
20 your ability to render a fair and just verdict in this
21 case?

22 JUROR: I'm still trying to remember the
23 article. The name rang a bell, and when you said what
24 he was charged with, I remember. Right now I can't
25 remember details.

1 THE COURT: All right. Now, as I indicated,
2 Mr. Nixon has been convicted and involuntarily civilly
3 committed to the Sexually Violent Predator Treatment
4 Program. Would the fact that Kevin Nixon has been
5 convicted of a sexual offense and has completed his
6 criminal sentence related to that conviction in any
7 way prevent you from being a fair and impartial juror
8 in this case? Don't tell me any reasons why, but tell
9 us who you are.

10 JUROR: Kerri Bennett.

11 THE COURT: Juror number?

12 JUROR: 27.

13 THE COURT: Yes, ma'am.

14 JUROR: 49, Lori Brister.

15 THE COURT: Juror No. 49 and No. 27 will not
16 be considered for selection. Thank you very much, you
17 may be seated.

18 Would the fact that Mr. Nixon has been
19 involuntarily civilly committed to the Sexually Violent
20 Predator Treatment Program in any way prevent you from
21 being able to be a fair and impartial juror in this
22 case, the fact that he has been committed?

23 In the end, ladies and gentlemen, those of you
24 who are selected to sit on this jury, you all will be
25 asked to render a verdict in this case. The State has

1 the burden of proving that Mr. -- beyond a reasonable
2 doubt that Mr. Nixon should remain in this program,
3 remain -- that it would not be safe for him to be
4 released, basically. The State has a burden of proving
5 that beyond a reasonable doubt. Should the State fail
6 to meet that burden, then Mr. Nixon would be entitled
7 to be released from the program. So, would the fact
8 that he has been involuntarily civilly committed to
9 this program in any way prevent you from being a fair
10 and impartial juror in this case? If so, we need to
11 know before you get on the jury, not after, on the
12 jury. Ladies and gentlemen, let me also remind you
13 that as part of the jury qualification process, you
14 took an oath to give complete and truthful responses to
15 all questions, so this is not the time to hold back.
16 This is the time to stand up, if anything, applies to
17 you.

18 If any of this would affect your ability to be
19 a fair and impartial as a juror, please stand. Tell us
20 your juror number.

21 JUROR: Debra Norris.

22 THE COURT: 276?

23 JUROR: Yes.

24 THE COURT: We will not consider you for
25 selection of this case, but please stay with us.

1 Ladies and gentlemen, has any member of this
2 jury panel or any of your close personal friends or
3 relatives ever been the victim of a sexual assault? If
4 you or any close personal friends or relatives have
5 been the victim of a sexual assault, please stand. We
6 have excluded the three of you already in the back, so
7 you don't need to stand anymore. You are juror who?

8 JUROR: 199.

9 JUROR: 205.

10 THE COURT: 199 and 205. If you will come
11 forward at this time along with Counsel -- oh, and --

12 JUROR: 391.

13 THE COURT: And 391. Just the ones that stood
14 up will need to come forward or who this applies to.

15 (The following was had at sidebar out of the
16 presence of the prospective jury panel.)

17 JUROR: 199, Michelle Singletary. My husband
18 was convicted. He has 22 years for assault and sexual
19 battery.

20 THE COURT: Would that prevent you from being
21 fair and impartial in this case?

22 JUROR: I think I would still be fair, but I
23 want you to know.

24 THE COURT: Thank you.

25 JUROR: I've been the victim of assault, and I

1 think that is going to make me bias.

2 THE COURT: Your juror number?

3 JUROR: 205, Sara Joseph.

4 THE COURT: You think it would affect your
5 ability to be fair and impartial?

6 JUROR: Absolutely.

7 THE COURT: We will not consider you. Just
8 have a seat.

9 JUROR: My wife and her sister were molested
10 as children by her uncle, and a friend of mine when I
11 was growing up in high school was molested that was a
12 relative.

13 THE COURT: Do you think that would affect
14 your ability?

15 JUROR: I don't, but I want you to know.

16 THE COURT: And what is your number?

17 JUROR: 391, John White. It was before I knew
18 my wife and family.

19 THE COURT: Okay. Next.

20 JUROR: My sister -- ex-sister-in-law was
21 raped in 1974, a long time ago.

22 THE COURT: Your juror number?

23 JUROR: 226.

24 THE COURT: And you think that would affect
25 your ability?

1 JUROR: I do not, but I wanted to disclose it.

2 THE COURT: Very good. Thank you.

3 (The following was had in the presence of the
4 prospective jury panel.)

5 THE COURT: Has any member of the jury panel
6 or any of your close personal friends or relatives
7 ever been charged with or convicted of a sex offense?
8 If you have a close friend, relative or if any of you
9 have been convicted of a sexual offense, if so, please
10 stand.

11 Does any member of the jury panel have any
12 training or experience in the field of psychiatry,
13 psychology or law? If you have training or experience
14 in law, psychology or psychiatry, please stand and tell
15 us about it. Any lawyers out there? Psychologist,
16 psychiatrist, anyone with any training in these fields?
17 All right.

18 Has any member of the jury panel currently or
19 formerly worked in any of those fields? If you worked
20 in law or law enforcement, psychiatry, psychology or
21 the treatment of anyone involving those disciplines, if
22 so, please stand. Yes, sir.

23 JUROR: 198. I used to be a state constable.

24 THE COURT: Used to be a state constable.

25 Thank you note, 198.

1 Any member of the jury panel know or has any
2 member of the jury panel ever been involved in a case
3 where any of the lawyers were involved, either Mr.
4 Brooks, Ms. Wetherton or anyone from the Office of the
5 Attorney General? If you have any experience with the
6 parties, litigant, any involvement in any case in which
7 any of the lawyers were involved or the Attorney
8 General's Office was involved, if so, please stand. No
9 one standing.

10 The witnesses that are expected to testify are
11 Ms. Amy C. Swan and Mr. Nixon?

12 MR. BROOKS: Yes, sir.

13 THE COURT: And/or Mr. Nixon. I think you
14 indicated you don't know any of them. If you know any
15 of them or have any involvement on a personal or
16 professional level, please stand. No one is standing.

17 Has any member of the jury panel been involved
18 in a prison ministry, prison outreach program or any
19 other program involving contact with people who are
20 incarcerated, or if you have been involved in any
21 program involving assisting people who have been
22 victims of criminal activity; if so, please stand.
23 Yes, ma'am.

24 JUROR: Do we stand again if we stood before?

25 THE COURT: Yes, ma'am, if it applies.

1 JUROR: I'm a pastor, so I counsel a lot of
2 people in that sense.

3 THE COURT: All right. Thank you very much,
4 Juror 19 --

5 JUROR: 199.

6 THE COURT: Has any member of the jury panel
7 or any close friends, relatives of yours ever been
8 subject to civil commitment proceedings or been
9 voluntarily or involuntarily committed through any
10 legal process, probate court, circuit court, any
11 court, any process involving civil commitment either
12 voluntarily or involuntarily? If you have had any
13 exposure or experience of that involving you or any
14 close personal friends or relatives, please stand.

15 JUROR: 153, Gainey.

16 THE COURT: Yes, ma'am. What is your
17 experience in that?

18 JUROR: Cousin committed to mental health for
19 a crime.

20 THE COURT: All right. Thank you. You are
21 about to stand?

22 JUROR: I was asking for child support or
23 anything like that?

24 THE COURT: No, we can't cover that. No.
25 Does not involve child support. Yes, ma'am.

1 JUROR: My sister was committed.

2 THE COURT: Your juror number?

3 JUROR: 310.

4 THE COURT: Involuntarily committed?

5 JUROR: Yeah. Do you need to know why?

6 THE COURT: Yes. If you don't wish to --

7 JUROR: She tried to commit suicide.

8 THE COURT: Would that fact affect your
9 ability to be fair and impartial in a case such as
10 this?

11 JUROR: No, sir.

12 THE COURT: If you know of any reason why you
13 should not be selected on this jury because you'll be
14 too concerned about the snow coming in, anything that
15 you think would affect your ability to be fair and
16 impartial or any reason why you should not be
17 selected, please stand. All right. Time is now.

18 Anything else that the State or Respondent
19 would like for me to ask?

20 MS. WETHERTON: Nothing from the State.

21 MR. BROOKS: Nothing for us.

22 THE COURT: Aside from those names we have
23 taken off, we'll select the jury. We don't give the
24 list in criminal court, but this is civil commitment,
25 so we have the list. How do you do it, Madam Clerk?

1 THE CLERK: I don't know if they need a few
2 minutes or not.

3 THE COURT: They strike four and four?

4 THE CLERK: Yes, sir. Are we doing an
5 alternate?

6 THE COURT: Absolutely, one.

7 THE CLERK: So we excused No. 2 on the front
8 page, and we'll go through 1 through 22.

9 (A brief pause in the proceedings.)

10 THE COURT: Okay.

11 MS. WETHERTON: State strikes 15.

12 MR. BROOKS: No. 18.

13 MS. WETHERTON: State strikes 22.

14 MR. BROOKS: No. 1.

15 MS. WETHERTON: State strikes 8.

16 MR. BROOKS: No. 9.

17 MS. WETHERTON: State strikes 14.

18 MR. BROOKS: No. 13.

19 THE CLERK: Alternate.

20 MS. WETHERTON: State strikes 23.

21 MR. BROOKS: 24.

22 THE CLERK: Alternate No. 2.

23 MS. WETHERTON: State strikes 26.

24 MR. BROOKS: No. 31.

25 THE CLERK: 26, 27, or 28.

1 MR. BROOKS: Okay. 28.

2 THE CLERK: State strikes Nos. 8, 14, 15, 22,
3 23 and 26?

4 MS. WETHERTON: That's correct.

5 THE CLERK: Defendant strikes Nos. 1, 9, 13,
6 18, 24 and 28?

7 MR. BROOKS: Yes, ma'am.

8 THE COURT: Any matters of law regarding the
9 jury selection?

10 MS. WETHERTON: Not from the State.

11 MR. BROOKS: None from the Respondent.

12 THE CLERK: As I call your name and jury
13 number have a seat in the jury box. 242, Bobby
14 Martin. Number 8, David Anderson. No. 185, Seth
15 Housand. No. 371, Linda Totten. 125, Tshura Eason.
16 249, Bailee McCrackin. 67, Jane Cannon. 72, Robert
17 Caswell. 305, Martha Reeder. 70, Tommy Carter. No.
18 312, Margaret Roessler. 151, Todd Furman. 18, Tina
19 Atkinson. 133, James Flavey.

20 THE COURT: Those of you who are not selected,
21 you are done for today. Call back after 6:00 for
22 further instructions as to when to come back. Thank
23 you very much.

24 (Whereupon, the unselected prospective jurors
25 exit at 12:35 p.m.)

1 THE COURT: We are ready to proceed?

2 MS. WETHERTON: Yes, sir, Your Honor.

3 THE COURT: Ladies and gentlemen, if you will,
4 stand to be sworn.

5 (Whereupon, the selected jury panel was
6 sworn.)

7 THE COURT: You have been selected and sworn
8 to -- read that oath again, what did you tell them?
9 What did you say?

10 THE CLERK: Well and truly try the issues in
11 this case and a true verdict rendered according to the
12 law and evidence.

13 THE COURT: You are well and truly to try the
14 issues joined in this case and render a what?

15 THE CLERK: True verdict.

16 THE COURT: A true verdict according to the
17 evidence, so help you God. So, ladies and gentlemen,
18 that means that you have just taken an oath, so help
19 you God, to well and duly try the issues in this case
20 and render a verdict according to the evidence, so
21 help you God. Under our laws and Constitution of
22 South Carolina, only you can determine the facts of
23 this case. You are the soul judges of the facts this
24 case and this case will be submitted to you to make a
25 determination of the facts.

1 Now, just as you are the sole judges of the
2 facts of this case, as the presiding judge, I am the
3 sole and exclusive judge of the law of this case. You
4 will determine the fact which you find them be and you
5 will apply the law, which I'll instruct you on, and
6 reach a verdict in this case.

7 This case is unusual in a sense that it is not
8 the normal type of case that jurors are commonly called
9 upon to hear. Typically, I do a hearing in a civil
10 case and it's a car wreck or something of that nature,
11 or a criminal case involving someone accused of
12 committing a crime. This case is different in the
13 sense that it is a proceeding in which the
14 Respondent -- not called the "defendant," he's a
15 "respondent" -- has been civilly committed under the
16 State's Sexual Predator Law.

17 In effect, your decision will be whether he
18 should remain committed or should be released, that is
19 the effect of your decision. In getting to that
20 decision, you must rely on the law. The law imposes
21 upon the reasonable doubt that the defendant should
22 remain committed. Should the State fail to meet that
23 burden, then the Respondent would be entitled -- your
24 finding would be that he would be released from
25 commitment and from this program.

1 You will necessarily have to evaluate the
2 credibility of the witnesses who have testified and the
3 evidence presented during this trial. It is important
4 that you keep an open mind concerning the matter, and
5 not only that you don't draw any conclusions until the
6 end, but also that you do not discuss it, because under
7 our system of laws, the jury is to hear the entire case
8 and deliberate only with those who have heard the
9 entire case. So it would be improper for you to be
10 influenced by anything you may see or hear outside of
11 the courtroom.

12 Also, it would be improper for you to engage
13 in any form of premature deliberations or any form of
14 personal investigation to see what else you can find
15 out about this matter. You are to sit and listen to
16 the evidence presented by the parties and the arguments
17 by the parties and the law as I will give it to you to
18 decide the case. Once you have done that, you will
19 fulfill your responsibility as jurors. I look forward
20 to working with you on this case. Later in the process
21 I'll appoint one of you to serve as the spokesperson,
22 called the jury foreperson, to preside over the jury
23 deliberations and to complete the verdict form
24 representing the verdict of the jury, a verdict which
25 must be an unanimous verdict.

1 We'll move to the State for opening
2 statements.

3 MS. WETHERTON: May it please the Court, Judge
4 Newman, Mr. Brooks and Mr. Nixon. I'm Nicole
5 Wetherton and I'm one of the newer assistant attorney
6 generals that is with the South Carolina Office of
7 Attorney Generals.

8 As Judge Newman explained to you, the reason
9 you are here is because we're going to determine
10 whether Kevin Nixon, who is a sexually violent
11 predator, whether or not he should be released at this
12 time from the Sexually Violent Predator Treatment
13 Program.

14 If you all are anything like me, when I first
15 heard about this law and statute I was wondering what
16 exactly is a sexually violent predator. About 15 years
17 ago a law was passed, 1998, with two thoughts in mind.
18 One, there is the idea that certain individuals suffer
19 from a mental abnormality and/or personality disorder
20 that makes them likely to commit acts of sexual
21 violence. These individuals need treatment and they
22 need treatment in a secured facility because they are
23 considered extremely dangerous individuals.

24 So back in 2006, Mr. Nixon was evaluated
25 pursuant to the Sexual Violent Treatment Act. He was

1 convicted of what is referred to in the statute as a
2 qualifying sexually violent offense. In fact, he had
3 been convicted of three sexual violent offenses. It
4 was believed he suffered from this mental abnormality
5 or personality disorder that would make him likely to
6 commit acts of sexual violence.

7 He underwent an evaluation by a forensic
8 psychiatrist, Dr. Pamela Crawford, and she determined
9 that he suffers from both a mental abnormality and a
10 personality disorder. He was diagnosed as a pedophile,
11 and he was found to have features of antisocial
12 personality disorder. Now, if you don't know what that
13 is, you'll learn more about that throughout the trial.

14 So Mr. Nixon was committed back in 2007, and
15 that is where he's been, housed at a Department of
16 Mental Health facility. Pursuant to the law, he comes
17 up for annual reviews every year to see if the mental
18 abnormality and personality disorder so changes that
19 he's safe to be at large and no longer likely to commit
20 acts of sexual violence against children.

21 He has gone through about five evaluations,
22 and every year, including the most recent evaluation,
23 it has been determined by the Department of Mental
24 Health that he is not fit for release. That is what
25 happened here. Dr. Amy Swan, who is right there in the

1 front row, she did the most recent evaluation.
2 Although she found he made some progress in treatment,
3 he is not ready to be released. His pedophilia and
4 antisocial personality disorder has not so changed that
5 he's safe to be at large.

6 So what Mr. Nixon wants you to do today is
7 disregard those findings of the Department of Mental
8 Health and let him out in the community. Dr. Swan is
9 here today, and she'll talk to you about what she did
10 and how she came to those conclusions, how Mr. Nixon
11 refused to even talk to her during her evaluation. Her
12 view of Mr. Nixon's treatment records, her discussions
13 with the treatment team, and she's going to talk to you
14 about how the existence of antisocial personality
15 disorder and pedophilia in a single person is a very
16 dangerous combination, and how that can take a very
17 long time to properly treat and what Mr. Nixon still
18 needs to do in order to be safe at large.

19 As the Judge told you, despite the fact that
20 these cases are civil in nature, I still carry a burden
21 of proof similar to that of a criminal case; it is
22 beyond a reasonable doubt. I'm going to tell you that
23 in this case I embrace that burden. I believe I will
24 prove to you beyond a reasonable doubt that Mr. Nixon
25 needs to remain in this program at this time.

1 Now, these cases, as you can imagine, by the
2 very nature contain very disturbing facts, and this
3 case is no different in that regard. I'm going to ask
4 you to do one thing. I want you all to listen to the
5 evidence, not just the evidence the State brings
6 forward, but all of the evidence. Listen to what the
7 defense tells you. Listen to what you hear, and pay
8 attention to what you don't hear. I believe at the end
9 of this case the verdict you will come to is very
10 clear, that Mr. Nixon needs to remain at the Sexually
11 Violent Predator Treatment Program at this time to get
12 that treatment he so desperately needs and to protect
13 the citizens of Horry County and the State from him.

14 MR. BROOKS: Good afternoon, ladies and
15 gentlemen. My name is Charles Brooks. I have the
16 honor of representing Mr. Nixon seated at the table.

17 Now, I have a different take on these cases
18 than my opposing counsel, and that is there comes a
19 point in time you have to look at everything and you
20 have got to be able to ascertain whether or not an
21 individual is ready to be let go. She indicated you
22 may hear things that shock the conscious, but obviously
23 this is a situation where we are not talking about
24 whether or not something happened, but we're talking
25 about whether or not something will happen in the

1 future, and that is an entirely different situation.

2 Some people talk about using a crystal ball.

3 Well, that is what the State is going to be asking you
4 to do, basically close your eyes and look into a
5 crystal ball. Granted, I agree with Ms. Wetherton that
6 we ask you to keep an open mind and listen to the
7 evidence. As Dr. Swan testifies I'll have the
8 opportunity to ask her questions. My client, Mr.
9 Nixon, he'll have the opportunity to testify and give
10 his version of what he has done, all the progress he
11 has made and why he needs to be let go.

12 There comes a point in time where it is time
13 to let go. We think that it has come upon that time,
14 and my client is exercising his right to be heard by
15 you as members of this community here in Horry County
16 that he has progressed, he has made progress, he has
17 done what he has supposed to do and ready to be a
18 productive member of society. Thank you.

19 THE COURT: Do you want to start, or break for
20 lunch?

21 MS. WETHERTON: It is up to you, Your Honor.
22 Either way.

23 THE COURT: Well, I think we'll break for
24 lunch. We'll break for lunch and come back and start
25 with testimony at 2 o'clock. So, ladies and

1 gentlemen, if you all will go with the bailiff.

2 THE BAILIFF: Yes, sir.

3 THE COURT: If you will, follow her to the
4 jury room. Please do not discuss the case. We need
5 you back to be ready to start at 2 o'clock, so be back
6 at five to 2:00 and we'll start.

7 (The jury exits at 12:48 p.m., and the
8 following is heard out of the presence of the jury.)

9 THE COURT: Mr. Brooks, have you had a chance
10 to look at the proposed jury charges?

11 MR. BROOKS: Yes, sir. I thought I sent an
12 E-mail back to your clerk saying that I had seen
13 everything from Ms. Wetherton and we were in
14 agreement.

15 THE COURT: I received it as well, I just
16 wanted to make a record in case there was last-minute
17 changes.

18 MR. BROOKS: Oh, yes, sir. I've seen those
19 jury charges countless times, and I reviewed them and
20 we sent an E-mail back to you.

21 THE COURT: And the verdict form is fine as
22 well.

23 MR. BROOKS: Yes, sir.

24 THE COURT: So do we have anything that will
25 prevent us from jumping right in at 2:00?

1 MS. WETHERTON: Nothing from the State.

2 THE COURT: So we'll be back at five to 2:00
3 and press on at that time.

4 (Whereupon, a lunch recess was taken.)

5 THE COURT: Are we ready for them?

6 MR. BROOKS: Yes, sir.

7 MS. WETHERTON: Yes, sir.

8 (The jury enters at 2:04 p.m., and the
9 following is heard in the presence of the jury.)

10 THE COURT: Welcome back, ladies and
11 gentlemen. Some of you have inquired about taking
12 notes. There are two schools of thoughts on note
13 taking. One is that they should be allowed, and one
14 is that they should not be allowed. I have no
15 preference one way or the other. Those who think that
16 the jurors should not take notes is because your duty
17 is to evaluate the credibility of the witnesses and
18 the evidence, and in many instances jurors who are
19 taking notes, they miss other keys as far as
20 evaluating and observing while their head is down
21 writing something, they miss something that might
22 otherwise be important as far as observing a demeanor
23 of a witness. Additionally, some people are better
24 note takers than other. Should you like to take
25 notes, understand that the notes that you take will be

1 no more important than the recollection of your fellow
2 jurors. Some people lose their concentration with
3 having a pen in hand and scribbling and doodling or
4 note taking or otherwise. It is totally up to you.
5 If you take notes, you have to leave them in the
6 courtroom during breaks and you can get them at the
7 end of the case to take them back during
8 deliberations. There are notepads for any of you who
9 would like to take notes, if you'll pass them out now.

10 Call your first witness.

11 MS. WETHERTON: State calls Dr. Amy Swan to
12 the stand.

13 (DR. AMY SWAN, having been duly sworn,
14 testified as follows:)

15 THE CLERK: State your name for the Court.

16 THE WITNESS: Amy Swan, S-W-A-N.

17 DIRECT-EXAMINATION

18 BY MS. WETHERTON:

19 Q Dr. Swan, what is your occupation?

20 A I'm a forensic psychologist.

21 Q Can you briefly tell the jury, what is the study
22 of psychology?

23 A Psychology is the study of human behavior.

24 Q So what is forensic psychology?

25 A Forensic psychology is psychology that is applied

1 to cases involved with the legal system.

2 Q What advanced degrees do you have?

3 A I have a doctorate in clinical psychology.

4 Q What states are you licensed in?

5 A I'm licensed in Florida, Missouri and South
6 Carolina.

7 Q And do you have any memberships in any
8 organizations?

9 A I do. Currently I'm chairman of the Probable
10 Cause Committee of the Board of Psychology in the State
11 of Florida, and that is the part of the government that
12 regulates the practice of psychology. I'm also a
13 member of the American Psychological Association, the
14 Association for the Treatment of Sexual Abusers, which
15 is the largest international organization devoted to
16 the study of sex offenders. I'm a member of the
17 Florida chapter of that organization. I'm also a
18 member of the International Association of Forensic
19 Nurses, as well as the Association of State and
20 Provincial Psychology Board.

21 MR. BROOKS: We are willing to stipulate to
22 Dr. Swan's credentials and her being used as an
23 expert.

24 MS. WETHERTON: I have a few more questions.
25 I would like to establish the credentials for the

1 jury.

2 THE COURT: All right. Ladies and gentlemen,
3 the defense has stipulated that she is an expert in
4 the field -- in forensic psychology.

5 Q (MS. WETHERTON) Have you ever testified in court as
6 an expert witness?

7 A I have, close to a thousand times in Georgia,
8 Florida, Iowa, Missouri and in federal court as well.

9 Q Have you ever been qualified as an expert in
10 sexually violent predator cases?

11 A Yes, 148 times.

12 Q Do you have any experience working directly with
13 sex offenders?

14 A I do. I have worked with sex offenders for 25
15 years.

16 Q Can you briefly talk about your relevant
17 experience that you have in relation to sex offenders?

18 A Yes. Between 1989 and 1991 I set up a treatment
19 program for sexual offenders. Between 1993 and 1995 I
20 worked at a community mental health center doing
21 evaluations and treatment of sexual offenders. Between
22 1996 and 1997 I worked at a community mental health
23 facility providing treatment for incarcerated
24 adolescent sex offenders. Between 1997 and 1999 I
25 worked in court psychology where I did strictly

1 evaluations of victims of sexual abuse as well as
2 perpetrators of sexual abuse. And then in 1999 I was
3 hired as the first psychologist to provide treatment to
4 the sexually violent predators in Florida. In the year
5 of 2000 I went into private practice, and I have been
6 doing -- approximately 90 percent of my forensic work
7 is involved with sexually violent predators in
8 different states.

9 Q For the record, have you treated convicted sex
10 offenders?

11 A Yes, I have.

12 Q Have you ever been qualified as an expert in sex
13 offender treatment?

14 A Yes, I have, over a hundred times.

15 Q Do you have any experience in conducting
16 evaluations on sexual offenders?

17 A Yes, I do.

18 Q Can you briefly explain your background in
19 regards to conducting evaluations of sex offenders?

20 A Yes. In all of the treatment programs I have
21 worked in, I have also done evaluations, because in
22 order to provide treatment, you have to evaluate each
23 individual sex offender to determine what their
24 treatment needs are. So between 1993 and 1995 I did
25 evaluations of sex offenders. Between 1996 and 1997 I

1 did evaluations of the incarcerated adolescent sex
2 offenders. Between 1997 and 1999 I did evaluations for
3 the court in Florida of sex offenders. In 1999, when I
4 first went to provide treatment to the sexually violent
5 predators in Florida, I was the one person that did all
6 of the psychosexual needs assessment prior to them
7 being taken into treatment. So I evaluated all of the
8 sexually violent predators in Florida.

9 Then, in 2000, my practice is -- beginning in
10 2000 my practice with sex offenders has strictly been
11 evaluation.

12 Q So how many evaluations have you conducted on
13 sexually violent predators?

14 A 532.

15 Q Have you ever conducted what is referred to as an
16 annual review?

17 A Yes, I have. I have done approximately 150
18 annual reviews.

19 Q Can you explain to the jury what exactly is an
20 annual review?

21 A An annual review is the process in which each
22 person who is committed as a sexually violent predator
23 has the opportunity to have their case reviewed and to
24 have the person, the doctor, who is reviewing the case,
25 determine if their condition has so changed that they

1 are safe to be released in the community and they will
2 not commit future acts of sexual violence.

3 Q Have you had any additional training or
4 experience within the field of psychology beyond the
5 doctorate degree?

6 A Yes. Since I got my doctorate degree I've done
7 853 hours of training specifically in the area of
8 sexual offenders, and 277 of those hours have been in
9 assessing the risk that a sex offender would commit
10 another sexual crime.

11 Q Have you testified before on behalf of people
12 being considered for commitment into the sexually
13 violent predator program?

14 A I have. In cases where I've determined that the
15 individual doesn't meet criteria as a sexually violent
16 predator, there is cases where I testified to that when
17 the matter goes to court.

18 Q Have you testified on behalf of people actually
19 committed into the sexual violent predator program?

20 A Yes. When I do an annual review and I determine
21 that the individual is ready to be released and safe to
22 be released in the community, then I would testify on
23 the behalf of that individual.

24 Q Have you ever recommended someone for release
25 from a sexually violent predator treatment program?

1 A Yes, I have, approximately 20 times.

2 MS. WETHERTON: At this time, I move for
3 Dr. Swan to be recognized as an expert in forensic
4 psychology -- and defense stipulated -- but also as an
5 expert in the treatment of sex offenders as well.

6 THE COURT: Mr. Brooks?

7 MR. BROOKS: No objection.

8 THE COURT: She is so qualified.

9 MS. WETHERTON: Thank you, Your Honor.

10 Q (MS. WETHERTON) Dr. Swan, how did you become
11 involved with this case?

12 A In this particular case, the South Carolina
13 Department of Mental Health contacted the Florida Civil
14 Commitment Center for a recommendation for a
15 psychologist to do 50 annual reviews, and I was
16 recommended, so I was assigned his case on October 31
17 of 2013.

18 Q And as an evaluator, were you paid to conduct
19 your evaluation in this case?

20 A Yes, I was.

21 Q Did you receive a different amount of payment
22 based on your conclusion?

23 A No. My conclusion is independent of the amount
24 of money that I received for the case.

25 Q So let's talk about the Sexually Violent Predator

1 Act. What are the requirements for someone to be
2 considered a sexual violent predator in the State of
3 South Carolina?

4 A The requirements are that the individual must
5 have been convicted of a sexually violent offense as
6 defined in the law and the individual suffers from a
7 mental abnormality or personality disorder that makes
8 him likely to engage in acts of sexual violence if not
9 confined in a secured facility for controlled care and
10 treatment.

11 Q When was Mr. Nixon committed into the SVP
12 program?

13 A October 17, 2007.

14 Q When he was committed back in 2007, what was his
15 mental abnormality or personality disorder?

16 A He had one mental abnormality, pedophilia,
17 sexually attracted to males and females, and antisocial
18 personality disorder.

19 Q And as part of your evaluation, did you diagnose
20 him with the mental abnormality or personality
21 disorder?

22 A I did.

23 Q And can you tell us what that is?

24 A Yes. I diagnosed him with pedophilia, sexually
25 attracted to both, non-exclusive type, poly-substance

1 dependence in a controlled environment, and antisocial
2 personality disorder.

3 Q Can you explain what pedophilia is?

4 A Yes. Pedophilia is sexual interest in children,
5 and that would be children who have not started -- have
6 not entered puberty.

7 Q What is the characteristics of pedophilia?

8 A The characteristics of pedophilia is that over a
9 period of at least six months the individual has
10 demonstrated or has experienced recurrent sexually
11 arousing fantasies, urges or behaviors involving sex
12 with children, primarily children under the age of 13,
13 and the individual has to be at least five years older
14 than the child.

15 Q Is pedophilia curable?

16 A No, it is not.

17 Q Can it be treated?

18 A It can be treated in some subset of individuals.
19 What we do in treatment is we teach them to control the
20 urges -- even though they are always going to be
21 present -- so that they don't act out on them with
22 children.

23 Q Can you explain what antisocial personality
24 disorder is?

25 A Yes. Antisocial personality disorder is a

1 persuasive disregard for the violation of the rights of
2 others that begins in childhood and persists into
3 adulthood.

4 Q What are the characteristics of an antisocial
5 personality disorder?

6 A The characteristics, there are eight of them.
7 The first is failure to conform to social norms with
8 respect to lawful behavior, for example, being
9 arrested, deceitfulness, impulsivity or failure to plan
10 ahead, irritability and aggressiveness, reckless
11 disregard for the safety of self and others, consistent
12 irresponsibility, lack of remorse, and the individual
13 must be 18 years old before they receive the diagnosis,
14 and they must have evidence of severe behavioral
15 problems prior to the age of 15.

16 Q Now, is antisocial personality disorder curable?

17 A It is not curable, but what we notice is that it
18 tends to mellow out for some of the individuals in
19 their 40s.

20 Q Can it be treated?

21 A It can be treated.

22 Q How does the presence of both these disorders in
23 one person impact the treatment?

24 A Well, there are two pathways to sexually
25 offending, having pedophilia or a sex disorder

1 increases your chance of offending, and having a
2 personality disorder, like antisocial personality
3 disorder, also increases your chances of sexually
4 offending because those individuals take what they
5 want, whenever they want it, and that includes sex.

6 This impacts treatment because not only do we
7 have to teach the individual strategies to control the
8 sexual impulses, but we also have to implement
9 treatment for the antisocial orientation. This
10 antisocial orientation typically causes them to defy
11 supervision and rules and not want to comply with
12 treatment requirements.

13 Q Does the fact that he has pedophilia and
14 antisocial personality disorder increase Mr. Nixon's
15 propensity to be dangerous?

16 A It does. It is a double whammy for Mr. Nixon
17 because either pedophilia or antisocial personality
18 would increase his risk of sexual re-offense, and he
19 has both of them.

20 Q Does he have any other disorders that may impact
21 Mr. Nixon's risk?

22 A He does. He has poly-substance dependence. What
23 that means is that he was addicted to multiple
24 substances at the same time. For Mr. Nixon, it was
25 alcohol, marijuana, cocaine and LSD. Mr. Nixon

1 reported that drugs made him not care about other
2 people's feelings and that made it easier for him to
3 sexually assault his victims when he was using drugs.

4 We also know that being intoxicated at the time
5 of a sexual offense increases your risk for another
6 sexual offense and drug use in someone who has
7 antisocial personality disorder disinhibits the acting
8 out, and that includes sexual acting out.

9 Q Now, as you said earlier, you conducted the
10 annual review of Mr. Nixon?

11 A I did.

12 Q When doing this type of evaluation, what are you
13 looking for?

14 A I'm looking to see if the treatment that he's
15 received has changed his mental abnormality or
16 personality disorder to the degree that he does not any
17 longer pose a risk to -- if he is at large in the
18 community and that he's not likely to commit future
19 sexual crimes.

20 Q Did you receive a file of information on him?

21 A Yes, I did.

22 Q What kind of information was in that file?

23 A The information in this file was everything
24 involved in his treatment from the time he was admitted
25 to the Sexually Violent Predator Unit, and that

1 included his original evaluation prior to his
2 commitment, his previous annual review for 2012 and
3 2013, his treatment assignments all the way back to
4 2008, information about his sexually violent
5 convictions, his behavioral infractions at the Sexually
6 Violent Predator Unit and his progress reports from his
7 treatment team at the Sexually Violent Predator Unit.

8 Q Where did you get the information from?

9 A I got that information from his file at the
10 Sexually Violent Predator Unit and from consultation
11 with his treatment team.

12 Q Now, is this the type of information that is
13 typically and reasonably relied on by experts in the
14 field such as yourself?

15 A Yes, it is.

16 Q And was all this information the basis that
17 formed the part of your opinion?

18 A Yes, it did.

19 Q Are you satisfied that you received enough
20 information to form the basis of your opinion?

21 A Yes, I am.

22 Q And as part of your evaluation did you meet with
23 and interview Kevin Nixon?

24 A I met with him briefly on November 5th of 2013,
25 and I offered him an opportunity to participate in the

1 annual review so I could get his take on how he was
2 doing in treatment, however, he chose not to
3 participate in the interview.

4 Q Did he tell you why he would not cooperate?

5 A He said that he had a previous evaluation with
6 Dr. Domino and that he believed that he had a chance
7 for release based on that evaluation, and so he didn't
8 want to participate in the current evaluation.

9 Q Did you review the previous evaluation of
10 Dr. Domino?

11 A Yes, I did.

12 Q Did the previous evaluator recommend that he be
13 released?

14 A No, she did not.

15 Q Is the man you met with, is he in the courtroom
16 today?

17 A Yes, he is.

18 Q Could you point him out to the jury?

19 A He is the man in the yellow jumpsuit.

20 MS. WETHERTON: May the record reflect that
21 Dr. Swan identified the respondent, Kevin Nixon.

22 THE COURT: It does.

23 Q (MS. WETHERTON) Did you have to review Mr. Nixon's
24 criminal history in order to reach your opinion?

25 A Yes, I did. It is important for my diagnosis of

1 antisocial personality disorder and also to determine
2 how likely he is to comply with treatment and to
3 determine what sex crimes he was charged and convicted
4 for.

5 Q How does a person's past sexual offenses relate
6 to future sexual offenses?

7 A The best predictor of future sexual offenses is
8 past sexual offenses. Obviously, the more times he
9 commits a sexual offense, the greater your risk is for
10 committing another sexual offense.

11 Q What facts about his prior offenses did you find
12 significant in making your decision?

13 A Mr. Nixon used his penis to penetrate the anus of
14 a baby, his nephew, who was seven months old. In 1995,
15 he also sexually abused the brother of that
16 seven-month-old baby. In 1999 he penetrated the vagina
17 of his six-year-old niece with his finger. He did this
18 multiple times. He also touched the buttocks of
19 another six-year-old niece, and he touched the genitals
20 of his nine-year-old niece, and all of these occurred
21 on more than one occasion.

22 Q Why are those facts significant?

23 A Those facts are significant because those are
24 important for diagnosis, and it also provides the basis
25 for my assessment of risk about whether he's likely to

1 reoffend or not.

2 Q Did you have -- does he have any non-sexual
3 criminal history you found significant?

4 A He did. He was arrested for two non-sexual
5 crimes, and he also has a significant history of
6 conduct disorder as a teenager.

7 Q Since 2007 has Mr. Nixon been in treatment at the
8 Sexually Violent Predator Unit?

9 A Yes, he has.

10 Q Can you describe the program that he is involved
11 in?

12 A Yes. The treatment program at the South Carolina
13 Sexually Violent Predator Unit is based on what we call
14 a modified Rockwood model. What that means is that
15 there is 17 core components to the program that each
16 individual must be -- must complete; however,
17 completion of those 17 modules does not mean that
18 you've completed treatment. Often a resident will say
19 I completed treatment, I did all the modules of the
20 Rockwood model, however, there is specific assignments
21 for each individual in addition to those 17 modules
22 that are very specific to this individual's offense
23 history, the sexual crimes he's committed and his
24 particular areas of sexual defiance or antisocial
25 behavior.

1 Q Has he completed any assignments?

2 A He has. He's completed numerous assignments.

3 Q What has he completed?

4 A He has completed the Rockwood modules and
5 completed very specific assignments for his sexual
6 offending history against children.

7 Q Can you talk in detail about the specific ones
8 that you saw that he completed?

9 A Yes. He completed the autobiography twice, and
10 that includes a sexual autobiography, once in 2008 and
11 then updated it in 2013. That is important because
12 they gain more information as they go along in
13 treatment, so it is important to update the
14 autobiography and their sexual autobiography so they
15 can make connections between how they got to the point
16 that they were sexually abusing children.

17 He also has done assignments on anger. Anger is
18 critical to his offense history. He's identified that
19 as a core issue, and the treatment team identified that
20 as a core issue. However, when I reviewed his anger
21 assignment it was essentially just a general essay on
22 anger and it didn't have anything specific to his
23 sexual offenses or how it played into the crimes he
24 committed against children. So it was my assessment
25 that he needed to do more work on that with regard to

1 what triggers his anger, how he responds and why.

2 He also did an assignment on low self-esteem. He
3 indicated that low self-esteem was a factor in his
4 sexual offending. He also completed the assignment on
5 lifestyle challenges, and he identified 20 different
6 lifestyle challenges, and there are many of those that
7 continue to need additional work.

8 Q Based on your review, has he shown progression in
9 treatment?

10 A He has shown some progression in treatment. He's
11 definitely been involved in treatment and he's
12 definitely progressing.

13 Q Based on your review of the files, what is his
14 attitude towards treatment?

15 A He appears to be committed to treatment. He has
16 had some difficulty adhering to the rules over the
17 years, although he has diminished his behavioral
18 infractions over approximately the last year.

19 Q And to a degree of psychological certainty, has
20 he completed all of his treatment?

21 A No, he has not.

22 Q What additional areas do you think that he needs
23 continued work on in order to move forward?

24 A One of the core issues that I thought that he
25 needed more work on was the emotional regulation,

1 specifically the anger, because throughout his
2 treatment he has identified that as one of the reasons
3 for his sexual offending. I believe that he needs more
4 treatment identifying his risk factors and coping
5 strategies to go along with those risk factors so that
6 he has a solid plan in place when he is released that
7 he can rely on in a critical situation.

8 He also needs to work on intimacy deficits. He
9 said he never had a stable relationship. He had one
10 relationship that lasted six to eight months, and this
11 is a factor in his sexual offending as well. I don't
12 believe that he has adequately addressed the role of
13 sexual arousal to children in his sexual offending. He
14 also needs additional work on his goals and plans
15 because he doesn't have a real solid release plan.

16 Q What types of issues in relation to sexual
17 self-regulation does he need to work on?

18 A I believe, as I said, that when he committed his
19 sex offenses he said he was feeling rejection,
20 abandonment, pain, loneliness, depression, low
21 self-esteem, mistrust and isolation. When asked to
22 account for how all those figured into going to the
23 point where you rape a seven-month-old baby, he said
24 that his offense cycle was that he had all of these bad
25 feelings and all of these issues with his girlfriend

1 based on his low self-esteem, and he would assault the
2 children and then that would make him feel better about
3 himself, that he would feel confident again sexually,
4 and so he identified that as his cycle.

5 Q Based on your review, has he within the past year
6 indicated that he has ongoing sex thoughts about
7 underaged girls?

8 A Yes. He said as recently as January 17th, 2013
9 that he had sexual thoughts about underaged girls.

10 Q Why is emotional regulation so important in
11 regards to Mr. Nixon's sex offender treatment?

12 A As I said, it figured permanently in his sexual
13 offenses. He has been described on the unit as being
14 sarcastic, disrespectful to staff, at times
15 argumentive, being in a bad mood. So it seems that
16 even though he is in a structured environment, he still
17 has difficulty regulating his emotional reactions to
18 situations, and since he identified that as a core
19 component of his sex offenses, we would like to see
20 more stability in those areas.

21 He said that his pattern was to shut down
22 emotionally so that he couldn't feel anything so he
23 wouldn't be hurt, but then he would explode later, and
24 that was related to his sex offenses. So, obviously,
25 if he's still demonstrating the pattern in treatment,

1 then he's not ready for release.

2 Q Has he had any behavioral infractions within the
3 past year that demonstrated a lack of emotional
4 regulation?

5 A Yes. He became frustrated in group on June 19,
6 2013. He had a verbal altercation with a peer, and he
7 began cursing and using profane language.

8 Q Had you been able to talk to Mr. Nixon -- if he
9 would have cooperated, would you have asked him about
10 that incident?

11 A I definitely would. It is important to get as
12 much information as I can, so I definitely want to talk
13 with the individual so that I can find out what is
14 really going on with them.

15 Q Does he accept responsibility for his sexual
16 offending?

17 A He has accepted responsibility for some of his
18 crimes. There were other crimes which he was not
19 charged with that I have not seen that he accepted
20 responsibility for.

21 Q Do you believe that he needs additional work on
22 this?

23 A Absolutely.

24 Q Do you think he needs additional work on intimacy
25 in relationship issues?

1 A Absolutely. As I just said, he related that to
2 the bad feelings that he had to feeling sexually
3 incompetent with his girlfriend, so he would sexually
4 assault a child and then he would feel better about
5 himself. So he needs to develop mature, intimate
6 relationships with age-appropriate partners so that he
7 does not sexually assault children.

8 Q Doctor, what are "risk factors"? You talked
9 about that a few times.

10 A Risks factors are individual factors that are
11 related to an individual's offense history that places
12 him at risk for another sexual offense.

13 Q What risk factors does Mr. Nixon have?

14 A Well, first and foremost, he's sexually defiant.
15 He has pedophilia, which is a sexual interest in
16 children. He also has antisocial personality disorder,
17 which is another pathway to committing new sex crimes.
18 He has a history of sexual preoccupation where he uses
19 sex to cope with bad feelings. He has problems with
20 emotional regulation, and when he is feeling bad, then
21 he sexually assaults children. He also has a history
22 of substance abuse and use of pornography, which all
23 feed into his sex offenses.

24 Q And are these risk factors significant with
25 regards to your opinion?

1 A Yes, they are.

2 Q Why is that?

3 A These are the very things that I believe he still
4 needs to continue to work on before he would be safe to
5 be in the community without another sexual offense.

6 Q Does Mr. Nixon have any plans for release?

7 A Mr. Nixon indicated in the records that he wanted
8 to work as a chef or in construction. He wanted to
9 reconnect with family, and he wanted to attend a
10 support group to support others. I have problems with
11 these plans. He's alienated from his family,
12 specifically because he sexually abused family members,
13 so there might be difficulty reconnecting with family.
14 There was -- his plans were vague and lacking in
15 specificity because he didn't identify particular
16 people he had contact with, particular organizations
17 that he could contact when he is released for support.

18 It is really hard on sex offenders when they are
19 released, so they need some organizational support so
20 they have someone to go to for help if things get bad.
21 It was really notable that he didn't mention that he
22 planned to get sex offender treatment, but he planned
23 to go to a support group to support others, which seems
24 to indicate to me that he doesn't really think that he
25 needs treatment, but that he could be of help to other

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1 people, and my opinion opposes that. I believe he
2 continues to need to work on himself rather than
3 thinking he could be a support to other people.

4 We know that without very specific, workable,
5 realistic relapse prevention plans, an individual is
6 more likely to reoffend because instability in their
7 life increases that possibility. So without that
8 specificity in his plans, I don't believe it is an
9 adequate plan.

10 Q For the record, has the Department of Mental
11 Health ever authorized him to petition for release?

12 A No.

13 Q In your opinion to a reasonable degree of
14 psychological certainty, has Mr. Nixon's mental
15 abnormality and personality disorder so changed that he
16 is safe to be at large and, if released, not likely to
17 commit actions of sexual violence?

18 A No, it is not.

19 Q If released, would he be on probation?

20 A No.

21 Q If released, will there be any way to compel him
22 or force him to continue sex offender treatment on an
23 outpatient basis?

24 A No, there is not. We know from research that sex
25 offenders almost never get treatment voluntarily. They

1 have to be mandated by some legal process in order to
2 get treatment.

3 Q Has Mr. Nixon ever participated in outpatient sex
4 offender treatment before?

5 A He did participate in approximately one year of
6 sex offender treatment after his crime against the
7 seven-month-old baby in 1995. He said that it was not
8 helpful, that he didn't learn anything, and he
9 reoffended after he had that treatment, so obviously it
10 was not beneficial to him.

11 Q So based on your review of his history, who would
12 be at risk if Mr. Nixon is released?

13 A Children, primarily, but he also said that he had
14 arousal to teenage girls, so those are two groups that
15 he would be a danger to.

16 MS. WETHERTON: That is all I have, Your
17 Honor.

18 CROSS-EXAMINATION

19 BY MR. BROOKS:

20 Q Hello, Ms. Swan.

21 A Good afternoon.

22 Q Now, you only talked to Mr. Nixon for, roughly,
23 five minutes; is that fair to say?

24 A That's correct, yes.

25 Q And that is when he indicated to you about a

1 previous interview with Dr. Domino?

2 A That's correct.

3 Q So the fact of the matter is that you really only
4 interviewed him -- sat down and talked with him -- for
5 basically five minutes?

6 A Yes, by his choice.

7 Q Okay. Whether it is his choice or whether there
8 was miscommunication, it only has been about five
9 minutes?

10 A That's correct.

11 Q And so since you didn't get a full fledged
12 interview from Mr. Nixon, whether it was his fault,
13 your fault or none of the above, you basically had to
14 rely on the file of Mr. Nixon; is that correct?

15 A I relied on his treatment records, as well as
16 consultation with his treatment team, Dr. Gothard and
17 Dr. Sipes.

18 Q And much of that would be considered his file?
19 His progress notes, his criminal record, original
20 evaluations, all of that, it's safe to say, for lack of
21 a better word and lack of going into each one of them,
22 that that would be "his file"?

23 A All of his treatment records, yes.

24 Q And that is basically all you had -- that was
25 basically all you could do in terms of forming an

1 opinion about him, was rely on what was in the file?

2 A That's correct, and my 25 years of expertise in
3 the area of sex offenders.

4 Q I understand. Now, basically, you can't
5 guarantee for sure that if Mr. Nixon gets out, that he
6 is going to do something sexually inappropriate, can
7 you?

8 A There is no guarantee, but I believe there is a
9 high likelihood.

10 Q That high likelihood is based on your years of
11 experience in dealing with various other individuals
12 and various other places that you've been; is that
13 correct?

14 A That's correct.

15 Q As well as the limited exposure you had to Mr.
16 Nixon, which would be his file?

17 A That's correct.

18 Q Now, Ms. Wetherton asked you about whether or not
19 he has made progress, and I think you testified that he
20 has shown progress?

21 A Yes, he has.

22 Q He has been in this program for a significant
23 period of time; is that correct?

24 A Yes, he has.

25 Q And he has gone through a great deal of treatment

1 at this facility; is that correct?

2 A Yes, he has.

3 Q Now, Ms. Wetherton asked you whether or not you
4 were familiar with the act as well as the treatment
5 program; is that correct?

6 A That's correct.

7 Q Now, at this treatment program, he is confined;
8 is that correct?

9 A That's correct.

10 Q Along with other individuals in the program?

11 A Yes.

12 Q He can't leave when he wants to?

13 A That's correct.

14 Q And he can't see who he wants to see?

15 A That's correct.

16 Q He can't call who he wants to call?

17 A That's correct.

18 Q He's basically under the supervision of the
19 Department of Mental Health?

20 A That is correct.

21 Q Now, to make sure we're clear, you don't give him
22 any type of treatment, you just came in to do an
23 evaluation; isn't that correct?

24 A That's correct. The reason for that is the
25 research shows that treatment providers who are

1 providing treatment for an individual are very poor at
2 assessing the risk they would commit another sexual
3 crime, so there has to be a separation.

4 Q I think you earlier said that he completed the
5 Rockwood models; is that correct?

6 A Yes.

7 Q And he completed his assignments?

8 A Yes, up to this point.

9 Q Up to this point?

10 A There are more assignments to come.

11 Q Now, when a person is committed into this
12 program, they can stay a year, or stay indefinitely?

13 A It is an indefinite commitment until they are
14 deemed safe to be in the community at large without
15 committing another sexual crime.

16 Q Being deemed safe to be released, that could be
17 after six months, six years or 60 years?

18 A That's correct. It is different for each
19 individual based on their history of sexual defiance.

20 Q So the treatment that a person gets when they are
21 in this program, it could last six months, six years or
22 60 years?

23 A That is correct. I've never known anyone in any
24 of the states that I work to be in treatment for 60
25 years.

1 Q But you do know individuals that have been in
2 there well into the double digits; is that correct?

3 A Yes, I do.

4 Q So -- and in order for an individual to get
5 treatment and to determine whether or not they have
6 completed the treatment, each individual is different;
7 isn't that correct?

8 A That's correct.

9 Q So one individual may complete all of the
10 necessary tasks and treatment after six months, and
11 another individual may not be able to complete all of
12 the individualized tasks and treatments he needs to do
13 for maybe ten years; is that correct?

14 A That's correct.

15 Q So, now, mostly everything in the file indicated
16 that Mr. Nixon engaged in significant progress based on
17 the individualized treatment program he was getting?

18 A He definitely made progress, he's just not there
19 yet.

20 Q In addition, he had been in the program since
21 '07, end of '07; is that what your notes reflect?

22 A Yes, that's correct.

23 Q As a matter of fact, he voluntarily went into the
24 program; isn't that correct?

25 A I'm not sure about that.

1 Q All right. You issued your report November 27,
2 2013; is that correct?

3 A That's correct.

4 Q That is less than 60 days ago -- about 60 days
5 ago?

6 A That's correct.

7 Q Now, in addition to that, as far as what you
8 write in your report with the physical health status,
9 you put in there that Mr. Nixon actually has
10 significant health problems; is that correct?

11 A I did note that he had health problems. I don't
12 believe they were sufficient that they would keep him
13 from sexually offending again.

14 Q But you also noted that he is currently on
15 medication as well?

16 A Yes, he is.

17 Q I believe about one, two, three, four, five, six,
18 seven -- he's on eight different types of medication
19 that he has been taking while he's at the program at
20 this time?

21 A Yes.

22 Q Is there anything in the review of his file that
23 indicates he has not been taking his medication?

24 A There's not.

25 Q Now, as far as his record while he has been there

1 in the program, is it fair to say that he's had no
2 significant infractions?

3 A Not in the last year. He had multiple
4 infractions the prior year. That was one of his areas
5 of improvement that he had gotten. I believe it was
6 six or seven the previous year, and I think he only got
7 one this year.

8 Q And that is part of what you are saying as far as
9 significant progress that he's making?

10 A It is part of it.

11 Q So, basically, for this jury, is it fair to say
12 that your opinion would be he's like having a turkey in
13 the oven, it is cooking, but it is not done?

14 A That's correct.

15 Q That is a fair characterization of your opinion?

16 A That's correct.

17 Q In the review of the criminal file you indicated
18 the seven-month-old nephew, and you also indicated the
19 two nieces; is that correct?

20 A Yes. There were two uncharged crimes, one was
21 the brother of the seven-month-old nephew, and one was
22 a nine-year-old niece.

23 Q Is that indicated anywhere in your report?

24 A That is not -- well, the nine-year-old niece is.
25 The brother of the seven-month-old baby is not, because

1 I just got that information this morning when I
2 reviewed the Department of Social Services' file.

3 Q So you got that information this morning, and
4 this is why that is not even in your file?

5 A That's correct. It was not contained in his file
6 at the Sexually Violent Predator Unit.

7 Q That particular -- at this point, that is just an
8 allegation, because he was never charged?

9 A That is an allegation. There was no legal
10 process, although it was founded by the Department of
11 Social Services.

12 Q But even though that may have been an indication
13 by their file, is it fair to say that he could very
14 well be innocent of that charge?

15 A As far as I know, no legal process was involved
16 in that charge.

17 Q As well as the other instance where it was
18 uncharged, it is fair to say that he might not have
19 done that as well?

20 A Well, he admitted to that one.

21 Q So being that he admitted to that, that is
22 actually a good thing as far as treatment in the
23 program; isn't that correct?

24 A Well, it says that he's at least accepted partial
25 responsibility for his crimes.

1 Q Now, when you said "partial," he wrote an essay
2 about it twice; isn't that correct?

3 A Correct.

4 Q Well, wouldn't it be fair to say that writing an
5 essay about it twice, wouldn't that be fair to say that
6 is acceptance of responsibility?

7 A He never mentioned the brother of the
8 seven-month-old baby.

9 Q Isn't it possible that he didn't do that
10 particular case as well?

11 A It could be possible. It could be possible that
12 he just hadn't accepted responsibility for it.

13 Q It is fair to say that you don't know?

14 A I do not know.

15 Q And it is fair to say that perhaps that should
16 not be used as a part of your evaluation of Mr. --

17 A And I did not, because I didn't have that
18 information at the time I did my evaluation.

19 Q You talked about him being poly-substance
20 dependent, basically, for lack of a better word,
21 addicted to drugs?

22 A Correct.

23 Q Various drugs?

24 A Correct.

25 Q And has he had any infractions that are drug

1 related in his file?

2 A He was cited for the possession of homemade
3 alcohol, but it was dismissed because they did not
4 believe that he was involved with that.

5 Q So since that was dismissed, it is fair to say
6 that he has not had any of these issues in quite
7 awhile?

8 A Correct. It appears that he has been abstinent
9 of substances.

10 Q And it's also fair to say that that drug
11 addiction or drug dependence played a significant role
12 in the crimes that he committed?

13 A That's correct.

14 Q And is it fair to say that it played a huge role
15 in the crimes he committed?

16 A I think it played a role. I believe the sexual
17 defiance and antisocial disorder played the major
18 roles, but this just unleashed his behavior and
19 permitted him to act on the urges that were already
20 there.

21 Q But doesn't his dependence factor into the scores
22 to determine the risk factors of recidivism?

23 A Not substance abuse, no.

24 Q Also in his criminal record you looked at what he
25 did while he was at the Department of Corrections; is

1 that correct?

2 A Somewhat.

3 Q You indicated in your report that the only major
4 disciplinary infraction he received was gambling and
5 loan sharking?

6 A Correct.

7 Q Is it fair to say that in your 25 years of
8 experience you have seen people who have gone into the
9 Department of Corrections who had numerous sexual
10 infractions while they were there?

11 A Correct.

12 Q And that obviously would have played a
13 significant role in your assessment of that individual?

14 A It would, except with Mr. Nixon he is sexually
15 aroused by children, and there is no children in the
16 Department of Corrections.

17 Q But I'm talking about in generality with people,
18 it is fair to say that other individuals who went in
19 have multiple sexual infractions; is that correct?

20 A I've seen that, yes.

21 Q Even those that might have gone in because of
22 something child related; is that correct?

23 A That's correct.

24 Q So there could be -- there are other individuals?

25 MS. WETHERTON: Objection. I'm objecting

1 based on relevance.

2 THE COURT: Mr. Brooks, "other individuals."

3 MR. BROOKS: Basically, Judge, Dr. Swan
4 indicated that my client fits a certain profile, he
5 suffers from pedophilia, and I'm trying to draw a
6 distinction between people who also may have engaged
7 in that, and they would have multiple sexual
8 infractions and shows more propensity of doing that.
9 As Dr. Swan testified, past behavior is a significant
10 indicator of probable future behavior.

11 MS. WETHERTON: Those other people are not on
12 trial today. I don't have their reports. I don't
13 know what their diagnoses are. It is too general. I
14 mean, I can't refute -- it is not relevant. What is
15 relevant is his diagnosis, what he's done while he's
16 been housed at the unit, I would say that is relevant.
17 As far as this person that doesn't exist, I don't know
18 what they've done or who they are, where they are
19 housed.

20 THE COURT: Objection is overruled.

21 A In the Department of Corrections and in civil
22 commitment facilities, I see a number of individuals
23 who obtain sexual arousal by exposing their penis to
24 female officers or staff persons, but those people have
25 another separate diagnosis called exhibitionism, and

1 Mr. Nixon doesn't have that, so I wouldn't expect him
2 to act out sexually in that way.

3 Q (MR. BROOKS) But there are individuals who have
4 gone into the Department of Corrections in this state
5 and multiple states that have had a pedophilia
6 diagnosis; is that correct?

7 A That's correct.

8 Q And they have had some type of crime related to
9 sexual offenses against children?

10 A That's correct.

11 Q And they end up having multiple sexual
12 infractions while in the department?

13 A Right. Typically because they have another
14 sexual disorder.

15 Q Mr. Nixon did not have that in this case?

16 A No, he did not.

17 MR. BROOKS: Beg the Court's indulgence.

18 THE COURT: Yes, sir.

19 (A brief pause in the proceedings.)

20 THE COURT: Let's stand for a moment.

21 (A brief pause in the proceedings.)

22 MR. BROOKS: No questions.

23 MS. WETHERTON: No redirect.

24 THE COURT: You may step down. Any additional
25 witnesses?

1 MS. WETHERTON: The State rests.

2 THE COURT: That is the State case, and I need
3 to discuss matters with Counsel prior to proceeding.
4 Please go to the jury room. Do not discuss the case,
5 and when you return, Ms. Eason, I'll appoint you to be
6 the foreperson of the jury. If you'll take the
7 foreperson seat and serve as the spokesperson for the
8 jury, preside over the deliberations and complete the
9 verdict form representing the unanimous verdict of the
10 jury.

11 (The jury exits at 3:02 p.m., and the
12 following is heard out of the presence of the jury.)

13 THE COURT: Any matters at this time?

14 MR. BROOKS: Yes, sir. We respectfully ask
15 the Court to grant the Respondent a directed verdict
16 and dismiss the petitioner -- petition to keep him
17 housed in the Department of Mental Health, Sexually
18 Violent Predator wing. We don't think the State put
19 forth evidence to meet its burden beyond a reasonable
20 doubt, that my client still has these problems that
21 make him unsafe to be released.

22 THE COURT: What says the State?

23 MS. WETHERTON: Thank you, Judge. You heard
24 the testimony by Dr. Amy Swan. You also heard all of
25 the things that she reviewed, how she spoke with the

1 treatment team, all of the records, entire progress,
2 the treatment assignments, and the areas that he still
3 needs to work on and why they are still important. If
4 he does not continue to get treatment, he'll get out
5 and sexually reoffend. So I believe that the State
6 met its burden and a directed verdict at this time
7 would not be appropriate.

8 THE COURT: All right. According to the
9 witness, he's a turkey in the oven still cooking and
10 not quite ready, so that means that he's not ready to
11 be released. It is her professional opinion that he
12 should remain where he is, and it is for the jury to
13 evaluate the credibility of the witnesses, so I
14 respectively deny the motion.

15 We'll take a few minutes. Do you need any
16 more time to confer with your clients prior to
17 proceeding?

18 MR. BROOKS: We're ready to go.

19 THE COURT: We'll take a three-minute stretch
20 and press on.

21 (A recess was taken.)

22 THE COURT: Let's bring them in.

23 (The jury enters at 3:14 p.m., and the
24 following is heard in the presence of the jury.)

25 THE COURT: All right. Madam forelady, how is

1 the jury doing?

2 FORELADY: Pretty good.

3 THE COURT: You've heard the State's case. It
4 is now the Respondent's turn. Mr. Brooks.

5 MR. BROOKS: We call Mr. Kevin Nixon to the
6 stand.

7 (KEVIN NIXON, having been duly sworn,
8 testified as follows:)

9 THE CLERK: State your name.

10 THE WITNESS: Kevin Nixon.

11 DIRECT-EXAMINATION

12 BY MR. BROOKS:

13 Q How are you today?

14 A Nervous.

15 Q Take a deep breath. I know you don't come to
16 court often. The court reporter is taking down
17 everything you are saying. The jury is here. This is
18 your day.

19 Now, I'll start off, you're in the Sexual Violent
20 Predator Program; is that correct?

21 A Yes, it is.

22 Q And you have committed some crimes; is that
23 correct?

24 A Yes, I have.

25 Q And you acknowledge that; is that correct?

1 A Yes, I do.

2 Q You were in the Department of Corrections for
3 approximately ten years?

4 A About seven. I maxed a 15-year sentence on a
5 non-violent charge.

6 Q And since that time, you've been in Columbia's
7 Sexual Violent Predator wing; is that correct?

8 A Yes, since October of '07.

9 Q And you voluntarily went into the program; is
10 that correct?

11 A Yes, I did.

12 Q At that time, you acknowledged that you had some
13 issues you needed to deal with?

14 A Yes, I did.

15 Q Now, since you have been in the program, you've
16 been undergoing treatment; is that correct?

17 A Yes.

18 Q What kind of treatment have you done?

19 A Basically whatever they've thrown at me.
20 Emotional regulation, risk factors, deviant sexual
21 thought patterns, everything, really.

22 Q Are you sorry about the victims in your case?

23 A Yes, I am. I'm more than sorry, I'm regretful.

24 Q How old are you?

25 A Me? I'm 35.

1 Q So, basically, you've been incarcerated since
2 about the age of 20?

3 A Yeah.

4 Q And what I mean by "incarcerated," either in the
5 Department of Corrections or in the Department of
6 Mental Health?

7 A Yes. About the same thing, as you can see.

8 Q Right. Right. You are restrained. You are
9 ready to go home now, is that right, Kevin?

10 A Yes, sir.

11 Q If you -- if this jury lets you go here today,
12 what is your plans?

13 A Well, my plans is to move to Florida with my
14 daddy. He's the only family I have in contact with
15 that still supports me as far as correspondence. I
16 support myself at the DMH facility. They have a work
17 program I'm part of, so I support myself in that area.
18 But as far as correspondences, my dad is the only
19 person I really have right now.

20 Q Now, you've heard some mention about anger?

21 A Yes, sir.

22 Q Are you in the position, mentally, to be able to
23 deal with your anger and certain other emotions similar
24 to that?

25 A Yes.

1 Q Are you able to deal with them in a way that
2 keeps you from doing the things that got you in this
3 situation?

4 A 100 percent.

5 Q Now, do you recall Dr. Swan coming out to talk to
6 you?

7 A Yes.

8 Q What happened in that interview, in your own
9 words?

10 A Well, I was escorted to the room where they have
11 set up, that they just got renovating for visits, group
12 therapies and visitations. I went in to see her, which
13 I didn't know anything about it. There was no heads up
14 that I was having another evaluation done, since we're
15 supposed to have one evaluation per year. When I went
16 in to see her, she sat down, told me her name, what she
17 was there for. I told her -- I said that I already had
18 an evaluation and that I previously was in court right
19 now on that evaluation waiting for trial. She
20 instructed me that she had to call Ms. Caturo
21 (phonetic), which is the overseer of the program right
22 now, and that she would come back and let me know
23 something.

24 When she came back in the room, she told me that
25 I didn't have to sit through it, that Ms. Caturo told

1 her not to interview me, so I was escorted back.

2 Q So, basically, it was not -- the fact that the
3 interview or exchange between you and Dr. Swan took
4 five minutes, that wasn't because you didn't want to
5 talk to her?

6 A Exactly.

7 Q If it wasn't for maybe this miscommunication, or
8 whatever went on, you would have fully cooperated; is
9 that correct?

10 A Yes. I've never declined an interview.

11 Q Okay. Now, we also heard discussion about if you
12 are released. As far as you know, anybody that has
13 committed a sexual offense, they have to register?

14 A Yes.

15 Q Do you know what registering means?

16 A Yes.

17 Q What is that?

18 A Registering means I have to go to the sheriff's
19 office or courthouse in the county I'm living in and
20 that I have to give them my name, address, where I'm
21 staying at, who I'm staying with, if I'm employed, by
22 whom.

23 Q As a matter of fact, you would have to do that in
24 South Carolina, Horry County, if you stayed here or if
25 you moved to Richland County in South Carolina or even

1 down in Florida; isn't that correct?

2 A Yes, sir. I was -- I'm familiar with that. I
3 had to register when I got out in '96/'97 after the
4 offense with my nephew.

5 Q You were 16 at the time?

6 A Yes. I did all of my -- I got released on
7 parole. I did all of my parole. I did not know at
8 first about the registry, which I got arrested for
9 failure to register, and that is when I found out that
10 I had to do that on a time schedule.

11 Q A regular basis?

12 A Right. So after that happened, I went back to
13 register and doing the things I was supposed to, and I
14 kept moving on with my life.

15 Q So there is some component to watch over you;
16 isn't that correct?

17 A Yes, there is.

18 Q And are you familiar with having to wear the
19 ankle monitor?

20 A Yes. Something I'm willing to do, if need be.

21 Q That would be something you would have to pay for
22 where you would be kept track of; is that correct?

23 A Yes, sir.

24 Q Now, have you done the things that the department
25 has asked you to do?

1 A Yes, sir, I have. When I first got incarcerated,
2 when I went to prison, I made up my mind that I was
3 going to do whatever was necessary to change my
4 behavior and my thoughts and everything so I wouldn't
5 have a victim again, nobody would be a victim of my
6 behavior.

7 Q You had drug dependence back then, too; is that
8 correct?

9 A Somewhat, yeah. I didn't really -- I could
10 function without them. My drug of choice was
11 marijuana. I was in construction and stuff like that,
12 it was around the job sites a lot and so I smoked a
13 little bit week to week, day-to-day, you know, behavior
14 drugs. I did them occasionally, but it was nothing
15 that I had to go to a rehab or anything for.

16 Q Now, obviously, you have not been engaged in that
17 for the last 15 years; is that correct?

18 A Correct.

19 Q Because you have been confined?

20 A Correct. The incident that happened at the
21 facility I'm at now with the alcohol, I walked by a
22 person's door at the time and I was joking around with
23 them. I had a cup in my hand and I didn't know that
24 they had alcohol in the room and was passing it out to
25 other people, that is how I got brought up into that,

1 because they seen me on camera at that person's door
2 with a cup in my hand. The thing that saved me getting
3 a charge is that the cup was upside down in my hand
4 when I went to the door.

5 Q As a matter of fact, they investigated that and
6 dismissed that alleged infraction?

7 A Yes.

8 Q And that was done in-house in the department?

9 A Yes, sir.

10 Q And you haven't had anything like that since?

11 A No, sir. They used to give random drug tests in
12 prison, I never failed one because I choose not to even
13 use them.

14 Q Now, Kevin, I'll ask the obvious question. You
15 have these folks sitting here in the jury, unsure,
16 going through folks' minds, are you going to engage in
17 any sexual inappropriate behavior when you get out?

18 A No, sir. Before I was incarcerated and before I
19 caught my last charge that put me in prison for 15
20 years, and evidently into the Department of Mental
21 Health Sex Offender Program, I tried to have
22 appropriate relationships. I've got a son that I don't
23 know, and he doesn't know me. He was born in
24 July 2000, and I was locked up in 2000. I haven't seen
25 him since he was three months old. I already had plans

1 to try to start a family and do the right thing. When
2 me and his mother broke up, that is when I reoffended.

3 Q What do you want here today, Kevin?

4 A I just want the truth to be out and known that I
5 have so changed. The diagnosis that they've given me,
6 antisocial personality disorder, anybody who has been
7 incarcerated or locked up has that disorder or can be
8 labeled with that disorder. Pedophilia, attracted to
9 both male and female, I'm surrounded by bisexual men,
10 women in the department, I never made any sexual
11 advances, never been charged with any sexual
12 inappropriate behaviors. I've always been compliant.
13 I never quit the program. I've always taken everything
14 given to me and done it to the best of my ability.

15 Q As a matter of fact, you've done everything in
16 the program. A person could be in the program at the
17 Department of Mental Health and not cooperate; isn't
18 that correct?

19 A Yes.

20 Q They could sit in the room all day?

21 A There are people there who are like that, yes.

22 Q But that has not been you?

23 A No, sir.

24 Q You have been going to the treatment, counselors,
25 peer counselors, all of the above; is that correct?

1 A Yes.

2 Q In order to get help?

3 A Yes. That's one of the reasons why I agreed to
4 be committed to the program, because I didn't want
5 another victim. I want that help. I wanted that
6 knowledge and the tools that I needed to correct
7 myself.

8 Q And you are readily admitting that that is how
9 you were back in '07; is that correct?

10 A Yes.

11 Q And here we are January of '14, and you feel like
12 you've done everything you've been asked to do?

13 A It is like they've said before, a person never
14 finishes their treatment, but the tools they take away
15 from it helps them complete what they need to learn to
16 be able to cope and deal with day-to-day activities and
17 problems that come their ways. That is what I look for
18 in the program, because in the program they give you
19 paperwork, and that paperwork it tells you certain
20 things. Group participation has it is where treatment
21 comes in at. Ongoing treatment, how you act and
22 perceive things on the unit, you know, interacting day
23 to day, that is the actual treatment. Just getting a
24 piece of paper, that is not a treatment. You have to
25 look for what you want and you have to find what you

1 need.

2 Q And you do acknowledge that if you got out, I
3 mean, you are not cured, you would have to get
4 additional treatment; is that correct?

5 A Yeah. I would like for some type of support
6 group.

7 Q And that is what we call "outside treatment"?

8 A Outpatient treatment, yes.

9 Q So it is not like you get out -- it's not your
10 intention you get out and just don't do anything, you
11 plan to get outpatient treatment?

12 A Yes. I've done took AA groups that they've had
13 in the institution -- the facility I'm at now. I've
14 taken all the side groups that they've offered. I'm
15 still trying to get in the little groups when an open
16 spot comes opened. I've never stopped.

17 Q Now, is there anything you want to tell the jury
18 as to why you should be released? Anything we've left
19 out?

20 A The only thing I can ask is not to really to
21 overlook my past, because the past is what makes you
22 the person in the future. From my past, these past
23 years that I've been incarcerated, the things I've done
24 in this program, evidence is in the paperwork, it's
25 been stated on both sides that I've done what has been

1 asked of me, and that should let you all know that I'm
2 100 percent serious about this. Is it no beating
3 around the bush or playing with words, I'm being direct
4 and honest. I'm ready to be released. I believe that
5 without a doubt in my mind I can be out there and be
6 productive and not have another victim. If need be,
7 I'll wear an ankle monitor, report, do whatever I have
8 to, even if it is court ordered where I have to go
9 support groups, I will do it.

10 Q But you don't need -- it is your plan to go get
11 outside -- outpatient treatment once you are released;
12 is that correct?

13 A Yes, whether it is -- I know in some areas they
14 don't have outpatient sexual offense areas, but there
15 is other areas that a person can go through, like
16 Dr. Swan said before, there are anger management
17 groups, and that can be something I can look into also.
18 It is something I had planned to do anyway. Anger has
19 been a problem with me ever since I was young. I mean,
20 records show that I've been able to keep that anger
21 under control. An outburst here and there, everybody
22 has those.

23 Q You haven't gotten any infractions related to
24 that since you've been confined?

25 A No.

CROSS-EXAMINATION

1
2 BY MS. WETHERTON:

3 Q Do you think you still need sex offender
4 treatment?

5 A Yes, I do, but not in the facility I'm at.

6 Q So you are concerned about reoffending?

7 A It is always a concern for me. It never has been
8 -- well, okay, I'm cured, I don't need to know anything
9 else. It's never been that for me.

10 Q Where you are moving, did you look to see if
11 outpatient sex offender treatment was offered?

12 A In the moving? As far as living with my dad?

13 Q Is that where you are going?

14 A Yeah, that is where I plan to go, Florida. One
15 of the things that the program tells us to do is --
16 unless they recommend us to be released -- is not to go
17 about finding your support teams or all of that stuff
18 until they recommend you to be released.

19 Q And you plan on living with your father?

20 A Yes.

21 Q And your father is elderly; is that correct?

22 A Yes. He's up in age.

23 Q And your father, obviously, was alive when you
24 were committing these last offenses?

25 A Yes.

1 Q And there is always costs involved for sex
2 offender treatment?

3 A Yeah, I suppose there would be.

4 Q And you were here during Dr. Swan's testimony?

5 A Yes.

6 Q And you heard her recommendations of things you
7 need to work on?

8 A As far as emotional regulation and stuff, yeah.

9 Q And you could have spoken with her, but according
10 to you, there was some type of miscommunication, and
11 you didn't?

12 A Yes.

13 Q But you have spoken previously with a mental
14 health professional other than someone who has worked
15 with the Department of Mental Health; is that correct?

16 A Who are you implying?

17 Q Did you speak with Dr. Martin?

18 A Yes, but he was -- agreed not to be used in
19 court.

20 Q And Dr. Martin was retained by defense?

21 A At one point in time.

22 Q When he evaluated you?

23 A Yeah.

24 Q And he's not here to testify on your behalf, is
25 he?

1 A No.

2 Q And your sex registration, is there any
3 counseling involved, sex offender counseling, when you
4 register?

5 A When I did -- when I first -- my first offense,
6 there was nothing that was offered by the parole board
7 or probation and parole office. I had to go to a
8 court-ordered treatment facility or outpatient thing,
9 and it was at Grand Strand Mental Health.

10 Q Wasn't that a condition of your probation?

11 A That was a condition of my parole.

12 Q But you are not going out on parole?

13 A No.

14 Q You would just have to register as a sex
15 offender?

16 A I would have to register as a sex offender, yes.

17 Q And you just provide your address where you are
18 living, correct?

19 A It has been awhile since I've -- before you had
20 to have to have a steady job -- well, a job. You had
21 to be able to pay for it. Your fees, week-to-week
22 fees, and they changed it, I think, to monthly or
23 something like that. You have to report regularly.

24 Q You reoffended while being registered as a sex
25 offender?

1 A Yes.

2 Q And in 1998, you were convicted for failing to
3 register as a sex offender?

4 A Yes. And that happened on an occurrence when I
5 moved from one address to another. At that point in
6 time, I didn't know about the changing and stuff like
7 that. When I did get arrested, that is when I found
8 out I had to go through all of the registering, and I
9 proceeded to register.

10 Q So the answer to my question is, yes, you were
11 convicted for failing to register as a sex offender?

12 A Yes.

13 Q Are you going to be on GPS monitoring?

14 A Not that I know of, but if need be.

15 Q No one told you --

16 A No one told me.

17 Q -- that you are going to be on GPS monitoring?

18 A No.

19 Q And at this time, if I heard your testimony
20 correctly, you don't think you had a drug problem in
21 the past?

22 A I used drugs, yes, I did, but as far as having a
23 dependency, no.

24 Q So you don't think to this day that you had a
25 dependency problem with drugs?

1 A No, I don't think I had a dependency, because I
2 functioned without them.

3 MS. WETHERTON: Nothing further at this point.

4 THE COURT: Mr. Brooks, anything further?

5 MR. BROOKS: No, sir.

6 THE COURT: You may step down. Any additional
7 witnesses?

8 MR. BROOKS: No, sir. That is the case.

9 THE COURT: That is the Respondent's case.
10 Any reply?

11 MS. WETHERTON: If I could have a couple of
12 minutes to speak with my doctor, I may call her in
13 reply.

14 THE COURT: We'll take another break. Ladies
15 and gentlemen, please do not discuss the case.

16 (The jury exits at 3:39 p.m., and the
17 following is heard out of the presence of the jury,
18 and a recess was taken.

19 THE COURT: All right. Bring in the jury.

20 (The jury enters at 3:47 p.m., and the
21 following is heard in the presence of the jury.)

22 THE COURT: Jury is back. Any reply?

23 MS. WETHERTON: No, Your Honor.

24 THE COURT: There is no reply. Ladies and
25 gentlemen, that means that you've heard all of the

1 testimony and received all of the evidence. It is now
2 time to hear the arguments by lawyers. State.

3 MS. WETHERTON: Thank you, Judge Newman. On
4 behalf of the Attorney General's Office and Attorney
5 General Alan Wilson, we would like to thank you for
6 your time. This is a very short case, but very
7 important case. I can't imagine when you got your
8 jury summons in the mail, you are probably imagining
9 you're going to go in and have a slip-and-fall in a
10 grocery store or car accident, and then we end up
11 trying to find out if someone should be released from
12 a sexually violent predator treatment program. I
13 imagine that is one of the last things on your mind.

14 This is a very important case to Mr. Nixon,
15 and this is a very important case to our office, and
16 this is a very important case to the community. Our
17 position is very simple. Mr. Nixon is not ready to be
18 released from the Sexually Violent Predator Treatment
19 Program at this time. Mr. Nixon pedophilia and
20 personality disorder remains such that he is not safe
21 to be at large, and if he's released, he's likely to
22 commit acts of sexual violence.

23 Why do we think that? What did you hear? You
24 heard the testimony of Dr. Swan who has no motivation
25 other than giving her professional opinion that Mr.

1 Nixon needs to remain in the Sexually Violent Predator
2 Treatment Program at this time. Dr. Swan came to the
3 conclusion, after a thorough review of Mr. Nixon's
4 record which included considering his criminal history,
5 progress, treatment, history, specific assignments that
6 he's completed and his behavior.

7 Although she found he made progress in
8 treatment, and I acknowledge that is a very good thing,
9 that is what we want to see, but he has not learned to
10 manage his pedophilia and antisocial disorder at a
11 level where he is not at risk to reoffend sexually
12 against children. Those are very important
13 distinctions that I want you to make. The statute we
14 have to follow does not allow a person to be released
15 simply because he's made some progress. His pedophilia
16 and antisocial personality disorder has to change, has
17 to be at a point that it can be managed to not reoffend
18 sexually. Based on Dr. Swan's expert opinion, he
19 simply is not there yet.

20 As the defense said, it is almost like he's a
21 turkey -- and I hate to put it that way -- but he needs
22 more time to cook, and that is really what your
23 position is. Regardless of what you think about the
24 statute, we have to follow what the law is. That is
25 why there is laws. He is not at a point, despite the

1 point he made progress, to be released from the program
2 at this time. She specifically said that there are
3 continued specific areas of treatment, such as anger
4 management, acceptance of responsibility and
5 relationship issues that Mr. Nixon needs to work on.

6 Another thing I found interesting while he was
7 testifying is he was diagnosed as having poly-substance
8 abuse. At this point he does not even acknowledge that
9 he had an issue with drug dependence. That shows,
10 again, that that is something he has to work on. That
11 gets into his mind, that lets you see he doesn't think
12 there is a problem. He can get treatment for those
13 things where he is now.

14 Dr. Swan also testified that the combination
15 of him being a pedophile and having antisocial
16 personality is difficult to treat. As recently as in
17 the past year, he's acted out, which is a trigger. His
18 anger is a trigger for him reoffending. He also has
19 admitted to staff about ongoing sexual thoughts about
20 underaged girls within a year.

21 As I asked you to do in my opening, listen to
22 all of the evidence. So what did you hear from the
23 defense? You heard Kevin Nixon say he wants to go
24 home, it is time for him to go. What he's asking you
25 to do is essentially override the decision of the

1 Department of Mental Health, disregard his own progress
2 and treatment, what he's done in his assignments,
3 disregard his treatment team, disregard the other
4 doctors and disregard the professional opinion of
5 Dr. Swan simply because Mr. Nixon believes it is time
6 for him to get out. Ladies and gentlemen, that is a
7 big gamble. If he's wrong, and he's been wrong before
8 because he's been convicted of these offenses more than
9 once, and these doctors are right, he's going to get
10 out and hurt a kid.

11 Based on the evidence presented, all of the
12 evidence presented, I believe that I've met my burden
13 of proof. The Judge is going to explain what that is,
14 and I ask you to find that Mr. Nixon needs to remain in
15 the treatment program for sexually violent predators.

16 MR. BROOKS: First, I want to thank you guys
17 for keeping an open mind and listening to Dr. Swan,
18 but also listening to my client, Mr. Nixon. Obviously
19 you have heard some things that are very horrific and
20 down-right repulsive, but I ask you to keep an open
21 mind.

22 Now, keeping in mind that these things are not
23 trying to make an excuse or say anything in mitigation,
24 these things occurred a long time ago, roughly about 15
25 to 20 years ago. My client was 16, 17, 18, 19 years

1 old, in that range. He's about 35 years of age now.
2 For basically more than a third of his life he has been
3 confined. He's been in the Department of Corrections.
4 When he finished his time, he acknowledged he had a
5 problem. He testified he voluntarily went into the
6 program and testified that he had done the treatment
7 that has been presented to him. That is what he's
8 done. He can only do that. He's expressed his
9 remorse, sorry for his actions. He's not trying to
10 make an excuse in front of you. This case is not about
11 whether or not he did it, he acknowledged it. This
12 case is about whether or not he's going to do it again.

13 Bear in mind that this young man was a very,
14 very young man when these offenses happened. He's now
15 in his mid-30s, away from society. He feels, and we
16 put forth the case, that it is time for him to be given
17 a second chance, a second chance as an adult. Who
18 among us is without sin? Mr. Nixon got up here. He's
19 in his uniform that he has from the program, chained
20 up, and I believe he was very eloquent in his testimony
21 to you. It is time to let him go. It sounds very
22 harsh, very horrific, but he acknowledged that. It has
23 come to a time to let him go.

24 He has done time in the Department of
25 Corrections. He has been in the program. He's done

1 the treatment. You've also heard that he's not had any
2 major infractions while he's been in the Department of
3 Corrections. You haven't heard anything about sexual
4 infractions while in the Department of Corrections.
5 He's been in the Sexual Violent Predator Treatment
6 Program, haven't heard of any sexual infractions. We
7 heard about one infraction of him supposedly having
8 homemade alcohol, and they dismissed that in-house.
9 They, being the Department of Mental Health in the
10 Sexual Violent Predator Program.

11 I present to you to say it is time to let him
12 go. Now, does that mean there is not any consequences
13 for his actions, nothing to monitor him? If anyone has
14 these types of offenses and convictions on their record
15 must register as a sex offender. In South Carolina, it
16 is currently forever. He may have to wear an ankle
17 monitor. For those of you that don't know, that is
18 where they put the GPS around your ankle and the local
19 county department or probation, they monitor sex
20 offenders wherever they are going, they have them on
21 the GPS monitor. He may have to wear that.

22 He may move to Florida. He's testified to you
23 that this is what his plans are. He has a plan to
24 work, plan to get out, plan to live in Florida. It is
25 time to let him go. Now, Kevin doesn't purport to be a

1 saint. He's not saying he didn't do it. He's not
2 saying don't punish him for his consequences, but he
3 has been punished. He served his time and pay his debt
4 to society. He also went to the mechanism that the
5 State of South Carolina has for people for who have
6 some type of disorder. He didn't have a trial and
7 profess that he didn't have it, he voluntarily went
8 into the program.

9 Here he is today, almost seven years later
10 into the program, asking for his second chance as an
11 adult. Now, one of the things that comes to my mind is
12 we all have -- some of us have children. I have
13 children. I'm not trying to vouch for my client. I'm
14 not saying he's an angel. He's not going to work in a
15 facility that puts him around children. He obviously
16 has to register. There is a reason that South Carolina
17 has that registry. They have to make sure that people
18 out there know if somebody has a certain offense. They
19 have to register so that they know about it. You have
20 to go to your local sheriff's department and they have
21 these things in place to register. It is a crime for
22 an individual not to register. Mr. Nixon testified
23 that he had that early on. He was still a teenager.
24 He acknowledged that.

25 Now, five, ten, 15 years ago, that is a

1 lifetime. He's a grown man now who has done the things
2 that the department has set out for him. Now,
3 obviously, you've sat here and heard things. I admit,
4 I get the file and look at things and I'm in horror in
5 some of the things presented to me, but there is always
6 a "but." We are a country of laws, and we're also a
7 country of second chances.

8 You've heard a lot of times a lot of athletes,
9 politicians who have done things that make our skin
10 crawl, things that make us upset of things they've done
11 and said, but they get second, third, fourth and
12 fifth chances. This young man here, he is asking for a
13 second chance as an adult. He is asking for a second
14 chance, and he's not even asking for forgiveness. He's
15 asking for forgiveness from his maker. He asks of this
16 of jury in Horry County for a second chance as an adult
17 for the things that he did when he was still a
18 teenager.

19 A lot of us have done crazy things when we
20 were a teenager, possibly regret it through the various
21 stages of our life. The things that Kevin did are
22 obviously horrific. He expressed remorse. He is sorry
23 for these things, but if you remember what Dr. Swan
24 said, past behavior is an indicator or potential
25 indicator of future behavior. Well, for the last five

1 years we don't have any major infractions, particularly
2 of sexual crime. The only thing was loan sharking and
3 gambling. The only thing they brought up -- they
4 brought up a dismissal of alcohol when he was in the
5 SVP program. So if we want to focus on the past
6 behavior, over the last 15 years he's been good. If
7 you go by that, he deserves a second chance.

8 What the State wants everybody to do in these
9 types of cases is to look -- believe they are looking
10 into this crystal ball and saying I feel pretty sure
11 that he's going to offend again, I feel pretty sure
12 that X plus Y is going to equal Z, and I'm not even
13 counting for the possibility of A. Well, if these
14 folks have such foresight, they can go out and pick the
15 numbers for the lottery. They can actually pick out
16 who is going to win next Sunday's big game and the
17 actual score and who is going to be the MVP. If they
18 told you that, would you go out and bet the house on
19 it? Probably not. Because you would have some
20 uncertainty about what they are saying about their
21 crystal ball. That is what they want you to do here
22 with Kevin Nixon. They want you to be assured of their
23 crystal ball and basically deprive Mr. Nixon of his
24 second chance.

25 The time has come for this young man to have

1 his opportunity. He will have certain restrictions as
2 far as having to register. What the State wants to do
3 is they say these things to scare you, but it is time
4 for him to have his chance. I want to thank you for
5 giving him your open mind and listening here today and
6 keep that in mind when you are back there deliberating.
7 The time has come. He paid his debt to society. He
8 has gone through the treatment they put him through.
9 He went through it. It is time for that second chance.
10 Thank you.

11 MS. WETHERTON: First, I want to note that as
12 Kevin Nixon testified, there is no indication that he's
13 going to be on any GPS monitoring. No one contacted
14 him. There is no indication that he will be.

15 Second, he told you about his release plans.
16 What does he want to do? He is going to run out and
17 find his kid. He is a convicted sex offender and
18 offended against his own family members. He told you
19 all, As soon as I go out, I'm going to find my kid.

20 As far as the second chance, I don't want you
21 to be minimized by what he did. Everybody makes
22 mistakes, that is true. I seriously doubt that any one
23 sodomized their seven-month-old nephew. That is not a
24 simple mistake, that is a crime, and I'm sure none of
25 you after you did that would jump out of jail and run

1 and done it again against two and three other children
2 who are your family members. It is a little more
3 serious than that.

4 Nobody here is looking at a crystal ball.
5 Those Department of Mental Health experts have training
6 and expertise and medical degrees and psychology
7 degrees, and I can promise you their background, as you
8 heard, was far more scientific than looking into a
9 crystal ball. They looked at him, they looked at him
10 and said he's dangerous, not ready to be out and he
11 needs more work. It is not that easy and/or simple.
12 It is far more that he has been observed 24 hours a day
13 in this program and he's receiving treatment. He needs
14 more time, that is exactly what it is. He'll get his
15 second chance. He'll get his second chance when he
16 gets through his treatment in order for these
17 professionals to sign their name on the line saying
18 he's at a point to be released. He's simply not there
19 yet.

20 As far as no major infractions, I want to
21 point out -- and I think you pretty much understand
22 it -- there is no kids in prison. He's not interested
23 in adult males, and that is the problem. He doesn't
24 have that much access to women, besides the case
25 managers, so he hasn't had sexual infractions, but he

1 hadn't been around children.

2 The drug stuff, you know, when we talk about
3 the drug situation, he will not have the access -- he
4 doesn't have any access to drugs where he would if he
5 was on the outside. So I want to point that out for
6 you.

7 Again, follow the statute, that is what the
8 law tells us to do. His mental abnormality and his
9 personality disorder has to change so that he can be
10 safe at large and not likely to reoffend, and he's just
11 simply not there yet.

12 THE COURT: Ladies and gentlemen of the jury,
13 the State has brought this case under the Sexually
14 Violent Predator Act of our code of laws. Our general
15 assembly has determined that those persons that are
16 found to be sexually violent predators, under the law,
17 require involuntary commitment in a secured facility
18 for long-term control, care and treatment.

19 Additionally, the general assembly has
20 determined that a separate involuntary civil commitment
21 process independent of the probate process is necessary
22 for these individuals. The involuntary civil
23 commitment of a sexually violent predator for control,
24 care and treatment is not a criminal proceeding seeking
25 incarceration for purposes of punishment. To be

1 committed the state in a prior proceeding had to prove
2 beyond a reasonable doubt that Mr. Nixon had been
3 convicted of at least one sexually violent crime as
4 they are listed in the act, and that he suffers from a
5 mental abnormality or a personality disorder that makes
6 him likely to engage in sexually violent crimes in the
7 future unless he's committed to a secure facility for
8 long-term control, care and treatment.

9 The Petitioner, Kevin Nixon, was committed
10 under this law in October of 2007. He has resided at
11 the sexually violent treatment program administered by
12 the State of South Carolina, Department of Mental
13 Health, since that time. This jury trial is to
14 determine whether Mr. Nixon should remain civilly
15 committed at the Sexually Violent Predator Treatment
16 Program.

17 The State bears the burden in this case to
18 prove beyond a reasonable doubt that Mr. Nixon's mental
19 abnormality or personality disorder remains such that
20 he is not safe to be at large and that, if released, is
21 likely to engage in acts of sexual violence. You will
22 make that decision on the basis of the evidence which
23 you have seen and heard and the law on which I'm now
24 instructing you.

25 If the state is able to meet its burden of proof,

1 it is entitled to a finding that Mr. Nixon should
2 remain committed to the Sexually Violent Predator
3 Treatment Program. If the State is unable to meet that
4 burden of proof, the Respondent is entitled to a
5 finding that he be released from commitment of the
6 Sexually Violent Predator Treatment Program.

7 In most civil cases the Petitioner only has the
8 burden of proving that a fact is more likely true than
9 not true, such as by the greater weight or the
10 preponderance of the evidence; however, in this type of
11 case, the State's burden of proof must be more
12 powerful. It must be beyond a reasonable doubt.

13 Under the constitution and laws of South
14 Carolina, you are the sole finders of the facts in this
15 case. I may not intimate to you in any way what I
16 might think about the claims in this case. You are the
17 judges of the credibility and believability of the
18 witnesses who have testified. In passing upon his or
19 her credibility or their credibility, you may take into
20 consideration many things such as what was the manner
21 and appearance of the witness who testified? Was he or
22 she straightforward, or was he or she hesitant in
23 answering? How did the witness come to know the facts
24 that he or she testified to? What was his or her
25 ability to know these facts? Is there some reason a

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1 witness would want to give testimony that would help or
2 hurt one side or the other Horry? In other words, was
3 the witness bias or prejudiced? Was the testimony of a
4 witness strengthened or weakened by other testimony or
5 evidence?

6 You, the jury, may believe as much or as little
7 of each witness' testimony as you think proper. You
8 may believe the testimony of a single witness against
9 many, or just the opposite. You may believe part of a
10 witness' testimony, and disbelieve the rest. You do
11 not determine the truth merely by counting the number
12 of witnesses presented by each side.

13 The fact that testimony is not controverted does
14 not mean that you must accept it as true and
15 undisputed. You must gauge the credibility of the
16 witness to determine the believability or the truth of
17 the facts offered through the testimony. Keep in mind
18 that throughout this process you have but one
19 objective, that is to seek the truth regardless of the
20 source of where it comes.

21 You have heard the testimony of a witness who has
22 special knowledge, skill, experience, training or
23 education in a particular field and who has been given
24 -- who has given her opinion as an expert as to matters
25 in which she is skilled. In determining the weight to

1 be given such an opinion, you should consider the
2 qualifications and credibility of the expert, and
3 should you consider the qualifications and credibility
4 of the expert and her reasons given for her opinion,
5 you are not bound by such opinions, you are to give
6 them the weight, if any, to which you think you deem
7 them entitled.

8 The value and effect of expert testimony is a
9 matter to be solely estimated by you, the jury. No
10 opinion of an expert can be accepted in and of itself
11 as truthful or reliable, but must be weighed by you and
12 convince your judgment beyond a reasonable doubt and
13 with the same force and effect as any other fact proven
14 in this case before you can rely upon it.

15 You must consider expert testimony in the same
16 manner as you do any other testimony and give it such
17 weight as you believe it to be entitled when considered
18 with all the other evidence in the case. Such
19 testimony is given for the purpose of helping you, and
20 not for the purpose of controlling your judgment.

21 Now, the same constitution and law that makes you
22 the finders of the facts and the evidence, as I've
23 discussed with you, makes me, as the judge, the sole
24 and only instructor on the law. You must accept as
25 correct the law which I charge and apply it to the

1 evidence as you find it and reach your verdict.

2 If I should make an error in the law as I
3 instruct it to you, there is another time and another
4 place and another court in which that error can be
5 considered and, if necessary, corrected. But for the
6 purpose of this case, you must accept the law as I
7 charge it, and in that regard I'll tell you that
8 neither you nor I, for that matter, should be concerned
9 about what we think the law ought to be, but only
10 concern yourselves with what I charge you the law, in
11 fact, to be.

12 The State must present evidence that convinces
13 you beyond a reasonable doubt. What is a reasonable
14 doubt in the law? A reasonable doubt is the kind of
15 doubt that would cause a reasonable person to hesitate
16 to act. Proof beyond a reasonable doubt is proof that
17 leaves you firmly convinced. There are very few things
18 in this world that we know with absolute certainty, and
19 the law does not require proof that overcomes every
20 possible doubt.

21 What is required is if based on your
22 consideration of the evidence you are firmly convinced
23 that Mr. Nixon's mental abnormality or personality
24 disorder remains such that he is not safe to be at
25 large and that, if released, is likely to engage in

1 acts of sexual violence, then you must return a verdict
2 for the State. If, on the other hand, you think there
3 is a real possibility that his mental abnormality or
4 personality disorder has changed such that he is safe
5 to be at large and, if released, not likely to engage
6 in acts of sexual violence, you must give him the
7 benefit of the doubt and find a verdict for the
8 Respondent.

9 Reasonable doubt may arise from evidence that is
10 in the case, or from the lack of evidence in the case.
11 It is up to you, ladies and gentlemen, to determine
12 whether or not a reasonable doubt exists in this case.
13 The State must prove beyond a reasonable doubt that
14 Mr. Nixon's mental abnormality or personality disorder
15 remains such, that he is not safe to be at large and
16 that, if released, is likely to engage in acts of
17 sexual violence.

18 Inherent in this cause is that the State must
19 prove the requirement that Respondent's mental
20 abnormality or personality disorder causes him serious
21 difficulty in controlling his behavior; in other words,
22 the State must prove beyond a reasonable doubt that the
23 individual that it seeks to commit suffers from a
24 mental illness which he cannot sufficiently control
25 without the structure and care provided by a mental

1 health facility rendering him otherwise likely to
2 commit a dangerous act.

3 In order for you to better understand the
4 elements of the State's cause of action, I'm going to
5 define for you some of the terms I just used.

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

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

17 Again, I remind you that the burden of proof is
18 on the State to prove to your satisfaction beyond a
19 reasonable doubt that Mr. Nixon's mental abnormality or
20 personality disorder remains such that he is not safe
21 to be at large and that, if released, is likely to
22 engage in acts of sexual violence. If the State
23 carries its burden of proof and convinces you beyond a
24 reasonable doubt as to its cause of action, it is
25 entitled to a finding that Mr. Nixon should remain

1 committed to the Sexually Violent Predator Treatment
2 Program. If the State does not meet that burden of
3 proof, Respondent is entitled to a finding he should be
4 released from the Sexually Violent Predator Treatment
5 Program.

6 Ladies and gentlemen, I am drawing near the end
7 of my charge, and I want you to clearly understand that
8 you are not partisans or advocates for the State or
9 Respondent. You do not serve as jurors to reward your
10 friends or punish your enemies. In this regard, you
11 have been selected by the State and Respondent to be
12 fair and impartial jurors. It is your duty by your
13 joint deliberations to determine the truth in this case
14 giving the Respondent the benefit of every reasonable
15 doubt on each and every issue. Then, to the facts
16 which you determine to be true, you should take and
17 apply the law which has been given to you by this Court
18 and thus arrive at a verdict which speaks the truth in
19 this case. In fact, the word "verdict," which has a
20 Latin derivative, means a true saying, thus, when you
21 have accomplished these responsibilities, you'll have
22 satisfied your oath as jurors and you'll have
23 discharged your duties to this court.

24 There are two possible verdicts which you may
25 find in this case. One, the State has proven beyond a

1 reasonable doubt Mr. Nixon's mental abnormality or
2 personality disorder remains such that he is not safe
3 to be at large and that, if released, is likely to
4 engage in acts of sexual violence. Or, two, the State
5 has not proven beyond a reasonable doubt Mr. Nixon's
6 mental abnormality or personality disorder remains such
7 that he is not safe to be at large and that, if
8 released, is likely to engage in acts of sexual
9 violence.

10 There is no significance, whatsoever, in the
11 order in which I state these possible verdicts, it is
12 simply that one must be stated first. All 12 of you
13 must agree to the verdict. Your verdict must be
14 unanimous. Your verdict cannot be based on sympathy,
15 passion, prejudice, emotion or any other consideration
16 not in evidence in the case.

17 Madam foreperson, when the jury agrees on the
18 verdict, you will sign your name as foreperson on the
19 line underneath the jury verdict. This is the form
20 that you will be given to indicate the appropriate
21 verdict and sign and date it. You'll knock on the door
22 and inform the bailiff that you've reached a verdict.
23 At that time, we'll receive you back in the courtroom.

24 I ask that you now return to your jury room, all
25 of you except the last two jurors selected, but do not

1 begin deliberations until you are told by the clerk or
2 bailiff to do so. There is matters that must be
3 discussed with the attorneys before you begin your
4 deliberations. We selected 14 jurors, but we can only
5 use 12. We know it is now 4:25. From the first 12
6 jurors selected, if there is any reason why you cannot
7 continue into deliberations today, please let me know
8 and we still have two alternates, and we can plug one
9 or two of them in if there is any reason why any of the
10 first 12 of you cannot stay and continue with the
11 deliberations. If so, let me know at this time.

12 All right. So all 12 of the first 12 are good to
13 go. Therefore, the last two jurors, if you will stay
14 here while the others go, and the bailiffs will bring
15 your belongings out of the jury room, if you have any
16 in the jury room. We'll let you know when it is time
17 to start talking. Thank you.

18 (The jury exits at 4:25 p.m., and the
19 following is heard out of the presence of the jury.)

20 THE COURT: Are there any additions or
21 corrections from the State or defense?

22 MS. WETHERTON: None from the State.

23 MR. BROOKS: None, Your Honor.

24 THE COURT: Were any exhibits introduced?

25 MS. WETHERTON: No, sir.

1 THE COURT: So they'll get the verdict form.
2 I won't submit the -- I'm not going to submit a copy
3 of the charge to the jury, unless you want me to.

4 MS. WETHERTON: No, sir.

5 MR. BROOKS: No, sir.

6 THE COURT: They can have at it. Our final
7 two jurors then, Ms. Atkinson and Mr. Falvey, all
8 right. Thank you all. We pick 14, we never know.
9 Quite often overnight, if we don't finish the day,
10 we'll have a number missing by tomorrow if the
11 forecast proves to be true. Because the first 12
12 stayed intact, we are through with you all.

13 Now, with regard to the jury and coming back
14 again, all jurors are supposed to call back after 6:00
15 today to find out the next move as far as jury duty is
16 concerned. I'm not sure what is what. I doubt that
17 they are asking the jurors to come back tomorrow. We
18 have things already scheduled, so you are good to go.
19 Thank you very much.

20 (Whereupon, the jury starts deliberations at
21 4:27 p.m., and the alternates are excused.)

22 THE COURT: All right. We'll be in recess
23 waiting to hear what they have to say.

24 (A recess was taken at 4:28 p.m.)

25 (Whereupon the following was had at 4:51 p.m.)

1 THE COURT: Okay. We have a question: Why
2 was Dr. Swan evaluating him? Time period, Dr. Domino?
3 Did he go into the facility to lessen his criminal
4 time in prison? Dr. Swan, was she petitioned because
5 she had this proceeding?

6 MS. WETHERTON: Just say the evidence is what
7 it is, I guess.

8 THE COURT: All right. Bring them -- oh, we
9 need to get him in.

10 (Whereupon, the Respondent is present.)

11 THE COURT: We have some questions. It says,
12 Why was Dr. Swan evaluating him? Did he go into the
13 facility to lessen -- L-E-S-S-O-N -- his criminal time
14 in prison? Dr. Swan, was she petitioned because he had
15 this proceeding?

16 What says the State?

17 MS. WETHERTON: It is just our position that
18 the evidence is now closed and that, you know, they
19 have all the information before them and we can't
20 reopen the record and add new details or information.
21 that wasn't submitted previously.

22 THE COURT: All right.

23 MR. BROOKS: I would agree, Judge. What is in
24 the record, is what is in the record.

25 THE COURT: If you'll bring them in.

1 (The jury enters at 4:54 p.m., and the
2 following is heard in the presence of the jury.)

3 THE COURT: Madam Forelady, you sent out a
4 series of questions. Why was Dr. Swan evaluating him?
5 Did he go into the facility to lessen his criminal
6 time in prison? Dr. Swan, was she petitioned because
7 he had this proceeding?

8 We've gone through the process of you hearing
9 an opening statement, the evidence was presented,
10 closing statements and then I charged you in the law
11 and gave the case to you to decide. The evidence has
12 been presented.

13 Also, I indicated to you that I may not
14 intimate to you in any way what I might think about the
15 claims in this case. It is totally inappropriate for
16 me to attempt to answer questions for you because I'm
17 not to comment on the evidence in the case. There are
18 no additional witnesses to testify, so I have no means
19 of answering any additional questions. Do you want me,
20 you know, bring back the witnesses and testify again?
21 Do you -- there is no mechanism to reopen the case to
22 give you more evidence. Whatever questions you may
23 have, those are questions you have, but not questions
24 that should be addressed to me, because the case has
25 been now given to you for you to decide. So, please,

1 go back to the jury room and continue your
2 deliberations.

3 (The jury exits at 4:57 p.m., and the
4 following is heard out of the presence of the jury.)

5 THE COURT: Any additions or exceptions?

6 MS. WETHERTON: None from the State.

7 MR. BROOKS: None from the Respondent.

8 THE COURT: We'll be at ease.

9 (A recess was taken at 4:57 p.m.)

10 THE COURT: Madam Forelady, if you'll stand.
11 Have you reached a verdict?

12 FOREPERSON: We have.

13 THE COURT: Is it unanimous?

14 FOREPERSON: It is.

15 THE COURT: If you'll pass it up. You may
16 publish it.

17 THE CLERK: State of South Carolina,, County of
18 Horry, in the Court of Common Pleas, Case No.
19 2006-CP-26-06311. Verdict: Has the State of South
20 Carolina proven beyond a reasonable doubt that Kevin
21 Nixon's mental abnormality and personality disorder
22 remains such that he is not safe to be at large and,
23 if released, likely to commit acts of sexual violence?
24 We, the jury, unanimously answer the question as
25 follows: Yes. Tshura Eason, foreperson, January 27

1 2014, Conway, South Carolina.

2 If this is your verdict, signify by raising
3 your right hands. Thank you.

4 THE COURT: Thank you. Any additional polling
5 requested?

6 MR. BROOKS: Yes, Your Honor.

7 THE COURT: Madam Clerk, if you'll poll each
8 juror individually.

9 THE CLERK: Yes, sir. 242, Bobby Martin, if
10 you'll stand. Is this your verdict, and still your
11 verdict?

12 JUROR 242: Yes.

13 THE CLERK: No. 8, David Anderson. Is this
14 your verdict, and still your verdict?

15 JUROR 8: Yes.

16 THE CLERK: 185, Seth Housand. Is this your
17 verdict, and still your verdict?

18 JUROR 185: Yes.

19 THE CLERK: 371, Linda Totten. Is this your
20 verdict, and still your verdict?

21 JUROR 371: Yes.

22 THE CLERK: 125, Tshura Eason. Is this your
23 verdict, and still your verdict?

24 JUROR 125: Yes.

25 THE CLERK: 249, Bailey McCrackin. Is this

1 your verdict, and still your verdict?

2 JUROR 249: Yes.

3 THE CLERK: No. 67, Jane Cannon. Is this is
4 your verdict, and still your verdict?

5 JUROR 67: Yes.

6 THE CLERK: 72, Robert Caswell. Is this your
7 verdict, and still your verdict?

8 JUROR 72: Yes.

9 THE CLERK: 305, Martha Reeder. Is this your
10 verdict, and still your verdict?

11 JUROR 305: Yes.

12 THE CLERK: 70, Tommy Carter. Is this your
13 verdict, and still your verdict?

14 JUROR 70: Yes.

15 THE CLERK: 312, Margaret Roessler. Is this
16 your verdict, and still your verdict?

17 JUROR 312: Yes.

18 THE CLERK: No. 151, Tod Furman. Is this your
19 verdict, and still your verdict?

20 JUROR 151: Yes, ma'am.

21 THE COURT: All right. The verdict is the
22 unanimous verdict of the jury. Any additional
23 matters, post-trials motions or anything from the
24 State?

25 MS. WETHERTON: None.

1 MR. BROOKS: Yes, Judge.

2 THE COURT: We'll hear you now.

3 MR. BROOKS: May it please the Court. We ask
4 for a motion to set aside basically on the same
5 grounds that we raise at the State's case that we
6 raise for the motion for directed verdict.

7 THE COURT: Well, the evidence is such that
8 the jury has listened and considered it. They've
9 heard from the State's witness and from Mr. Nixon, and
10 they have determined that they are convinced beyond a
11 reasonable doubt that the defendant should remain in
12 the Sexually Violent Predator Program, that he has not
13 reached a point where he should be released to the
14 general public, and that would pose a safety hazard to
15 the community at large and possibly even to Mr. Nixon.

16 I think the verdict is supported by the
17 evidence, and it is an appropriate verdict based on the
18 evidence, and I respectfully deny the motion.

19 Ladies and gentlemen, thank you very much. As
20 I said to you initially, this is a rather different
21 type of proceeding because it's a civil commitment
22 proceeding, but, of course, you hear over and over
23 again throughout the country where things happen and
24 people ask, well, why wasn't that person -- why was
25 that person free to do what they did, and there

1 probably are many reasons why they were free to do what
2 they did, such as abduct and injure children and
3 others. This procedure is a safeguard against that in
4 a sense that it allows the community to determine
5 whether a person should be safely returned to the
6 community, or whether they should remain for further
7 treatment until they satisfied the state and the
8 authorities that there is a recommendation by the state
9 for them to be released. There are various layers of
10 hearings and processes to go through to make that
11 determination.

12 Rarely will the person who is committed
13 believe that they should stay committed. In some
14 instances I imagine they do, but the ones we see are
15 the ones where they are trying to get out. I'm sure
16 Mr. Nixon will continue to try to improve and to
17 convince those who he has to deal with that he is ready
18 to be released, and that process comes up on a periodic
19 basis. The evaluations must be done how often?

20 MS. WETHERTON: Every year.

21 THE COURT: Every year. So it is not a life
22 sentence. There are various steps, and at some point
23 in time he may be released. At some point in time, he
24 may never been released. As Mr. Brooks argued,
25 decades, eternally. You know, you never know, but it

1 is a process and safeguard, and it is an important
2 matter for Mr. Nixon and important matter for all of
3 us because we are all part of the greater community.

4 So I want to thank you for your services.
5 Thank you for the time and attention you took with this
6 case. Now, while you were back deliberating, we got an
7 advisory from Horry County and the Chief Justice of the
8 Supreme Court saying that due to inclement weather,
9 Horry County offices will be closed tomorrow, and so I
10 guess you possibly will need to call back after 6:00
11 tomorrow.

12 THE CLERK: Yes, sir.

13 THE COURT: Call after 6:00 tomorrow and find
14 out if there is anything else going on here this week
15 as far as additional court hearings. Of course, if
16 the weather is real bad tomorrow, it will be hard to
17 get a call to say come in Wednesday. It depends, but
18 for now, thank you very much, and look to see you
19 again. You are free to go. We like to speak with the
20 foreperson before you leave, but the others can go.

21 (Whereupon, the jury exits at 5:35 p.m.)

22 MS. WETHERTON: I do have an order for
23 continued commitment, and I can show that to you. I
24 can take care of the filing for you.

25 THE COURT: Okay. We're done. Thank you.

1 (Whereupon, the trial concluded.)

2 CERTIFICATE OF COURT REPORTER

3 State of South Carolina)

4 County of Horry)

5
6 I, Natalie Dahl, Official Court Reporter for
7 the State of South Carolina, do hereby certify that the
8 foregoing is a true, accurate and complete Transcript
9 of Record of the proceedings had and evidence
10 introduced in the trial of the captioned case, relative
11 to appeal, in the Court of Common Pleas for Horry
12 County, South Carolina, on the 27th day of January,
13 2014.

14 I do further certify that I am neither of kin,
15 counsel, nor interest to any party hereto.

16
17 June 17, 2014.

18
19
20 

21 Natalie Dahl, RPR

22 Court Reporter
23
24
25

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JAN 15 2015

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Honorable Clifton B. Newman, Circuit Court Judge

SC Court of Appeals

Appellate Case No.: 2014-000235

In the Matter of the Care and Treatment of

Kevin Nixon

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 13th day of January, 2015, I served the foregoing **Brief of Appellant and Record on Appeal** as well as **Proof of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on January 12, 2015, addressed to the following as indicated below:

Office of Attorney's General
Attn: Deborah Shupe, Esquire
Post Office Box 11549
Columbia, South Carolina 29211

South Carolina Court of Appeals
Attn: Jenny Abbott Kitchings
Post Office Box 11629
Columbia, South Carolina, 29211

Mr. Kevin Nixon
S. C. Dept. of Mental Health
SVP Program
7901 Farrow Road
Columbia, South Carolina, 29203

Dated: January 12, 2015



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