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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Benjamin H Culbertson

IN THE MATTER OF THE CARE AND
TREATMENT OF JOHN O'NEIL JOHNSON,,

APPELLANT

APPELLATE CASE NO. 2021-000249

RECORD ON APPEAL

James K Falk, Esq.
Falk Law Firm
PO Box 1058
Charleston, SC 29402

ATTORNEY FOR APPELLANT

Deborah R.J. Schupe, Esq.
Office of SC Attorney General
PO Box 11549
Columbia, SC 29211-1549

ATTORNEY FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA TRANSCRIPT OF RECORD
2 COUNTY OF HORRY CASE NO. 2007-CP-26-7123

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7 B E F O R E: The Honorable Benjamin H. Culbertson

8

February 11, 2021

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11 JOHN O'NEIL JOHNSON,

12 Respondent,

13

vs.

14 STATE OF SOUTH CAROLINA

15 -----

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18 APPEARANCES:

19

Suzanne J. Shaw, Esq.
Assistant Attorney General
For the State

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21

James Falk, Esq.
Attorney for the Respondent

22

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Official Court Reporter,
Cynthia D. Weaver

24

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1 P-R-O-C-E-E-D-I-N-G-S:

2 THE COURT: All right. Mr. Johnson can you see
3 and hear everyone?

4 THE WITNESS: Yes, sir.

5 THE COURT: All right. This is Case Number
6 2007-CP-26-7123, in re the care and treatment of John O.
7 Johnson.

8 The matter is before the Court on an annual review
9 regarding Mr. Johnson's commitment pursuant to the Sexually
10 Violent Predators Act.

11 Present at the call in the case is Suzanne Shaw of
12 the Attorney General's Office representing the State. Also
13 present is James K. Falk as attorney for the Respondent,
14 Mr. John O. Johnson. Mr. Johnson is present.

15 Now, since we are doing this remotely, what I like
16 to do and what I generally do on all of these, is for the
17 court reporter to have an accurate record, I want to go
18 around and everybody who's participating I want you to give
19 your name, the capacity in which you are appearing, and
20 where your physically located during this hearing.

21 I'll start off. My name is Judge Ben Culbertson.
22 I'm a Resident Circuit Court Judge for the 15th Judicial
23 Circuit. I'm also the Chief Administrative Judge for the
24 Court of Common Pleas for the 15th Judicial Circuit. During
25 this hearing I am physically located in Courtroom 3D of the

1 Horry County Judicial Complex in Conway, South Carolina.

2 All right. Ms. Shaw, you want to go next?

3 MS. SHAW: Sure, Your Honor. Good morning, may it
4 please the Court. Suzanne Shaw, Assistant Attorney General,
5 with the South Carolina AG's office on behalf of the State.
6 I am physically located in my office on, I believe it's the
7 Brown Building, I could be wrong though, but at the State
8 House Complex.

9 THE COURT: All right. Mr. Falk.

10 MR. FALK: I'm James Falk. My last name is
11 spelled F-A-L-K. And I'm physically at my office at
12 38 Broad Street, Charleston, South Carolina.

13 THE COURT: All right. And Mr. Johnson, where are
14 you?

15 MR. JOHNSON: I'm in Lee County Prison. I have a
16 question, sir, Mr. Culbertson.

17 THE COURT: Hold for one second, I just need to
18 know where you are right now. Okay?

19 MR. JOHNSON: Yes, sir.

20 THE COURT: Where are you?

21 MR. JOHNSON: Lee County Prison, Correctional
22 Facility.

23 THE COURT: All right. All right, Dr. Tross,
24 where are you?

25 MS. TROSS: I am at my office.

1 THE COURT: All right. I mean what city? Where
2 are you?

3 MS. TROSS: Columbia, South Carolina.

4 THE COURT: All right. Thank you. All right, and
5 Dr. Baez-Lockard, where are you?

6 MS. BAEZ-LOCKARD: I'm in my private office in
7 Piedmont, South Carolina.

8 THE COURT: All right. Thank you, very much.

9 All right, Mr. Falk do you have any type of
10 communication capabilities with Mr. Johnson? I mean, he
11 wanted to say something. I wanted him to speak with you
12 first before -- before we did anything.

13 MR. FALK: Mr. Johnson, is there anybody in that
14 room that I could -- that could give me a telephone number
15 and I can call them?

16 MR. JOHNSON: Yes, sir. She's right out there.

17 MR. FALK: Could you bring her in so I can talk to
18 her for a minute?

19 MR. JOHNSON: Yes, sir.

20 MS. SHAW: Your Honor, if Mr. Falk needs to speak
21 to his client privately, the way we've been doing it with
22 Judge Hocker's courtroom is just everybody step away from
23 the computer and turn the volume down so he can have a
24 private conversation if that's necessary.

25 THE COURT: Okay.

1 MR. FALK: I can just walk away from my computer,
2 it's easier if I'm going to get on a telephone, I'll just
3 walk away.

4 THE COURT: Okay. As a matter of fact, Mr. Falk,
5 what I'm going to do is just go ahead and mute both you and
6 Mr. Johnson. And then when you come back, I'll un-mute you.
7 Okay?

8 MR. FALK: Okay.

9 THE COURT: I'm sorry, say that again?

10 MR. FALK: Let me wait until I get the telephone
11 number because they're probably going to have to tell me
12 over -- what number to call in on.

13 THE COURT: All right. We can do that.

14 MS. SHAW: Your Honor, just a heads up. I'm not
15 sure why Mr. Johnson would be at Lee Correctional. He is
16 supposed to be at Wellpath.

17 THE COURT: I don't know either.

18 MS. SHAW: So we're finding that out on our -- my
19 colleague is going to make a phone call.

20 THE COURT: All right.

21 MR. JOHNSON: You guys referring to me as John O.
22 Johnson, I have no middle name.

23 MS. SHAW: Sir, your name isn't John Oliver
24 Johnson?

25 MR. JOHNSON: No, ma'am. John Johnson.

1 THE COURT: Well, now, the case I have, has John
2 O'Neil Johnson.

3 MR. JOHNSON: I have no middle name.

4 MS. MCCOY: Correct. This is not the resident in
5 question.

6 THE COURT: It's not?

7 MS. MCCOY: No.

8 THE COURT: Okay. Now, do y'all have a John
9 O'Neil Johnson -- have y'all treated?

10 MR. JOHNSON: It has nothing to do with me.

11 MS. MCCOY: No, the resident we need is housed at
12 the Broad River Correctional Complex at a Wellpath facility.
13 This Mr. Johnson is not a SVP resident, he's just a State
14 inmate.

15 THE COURT: All right. So what do we do to get
16 Mister ---

17 MR. FALK: I'm gonna call -- I'll call Cathy
18 Garner.

19 THE COURT: Well, now wait a minute. I have a
20 John Johnson that's trying to get in, let me make him
21 panelist and see if that's who it is.

22 MS. SHAW: Right. We are looking for a white,
23 older gentleman.

24 THE COURT: All right. John Johnson at Wellpath?

25 MR. FALK: Yes, Your Honor.

1 MS. SHAW: That should be him.

2 THE COURT: Okay.

3 MR. FALK: I'll tell you, I was just as confused
4 as everybody else.

5 THE COURT: Ms. McCoy, that John Johnson is the
6 wrong John Johnson, so I'm going to go ahead and excuse you
7 from this hearing, okay?

8 MS. MCCOY: Okay. Thank you.

9 THE COURT: Thank you.

10 THE WITNESS: Can you all see me?

11 THE COURT: Yes. Can you see and hear us,
12 Mr. Johnson?

13 THE WITNESS: Yes, sir.

14 THE COURT: All right. Sir, your name is John
15 O'Niel Johnson?

16 THE WITNESS: Yes, sir.

17 THE COURT: Okay. All right.

18 We can go ahead and get started. We had the wrong
19 Mr. Johnson here. Okay.

20 THE WITNESS: I was talking to you all, but you
21 couldn't hear me.

22 THE COURT: That's correct. I apologize for that.

23 So you have heard and seen everything that's
24 transpired thus far Mr. Johnson?

25 THE WITNESS: A moment of it. I was getting

1 somebody to come to the computer to get it straightened for
2 me.

3 THE COURT: Okay. All I need you to do at this
4 point in time is to tell us where you are physically located
5 during this hearing.

6 THE WITNESS: I'm here at Wellpath at Broad River,
7 4445 Broad River Road.

8 THE COURT: Okay. All right. Thank you.

9 Ms. Shaw, are we ready to proceed?

10 MS. SHAW: Yes, Your Honor, we are. If you'll
11 allow me to take it away, we can begin.

12 THE COURT: All right. Go ahead.

13 MR. FALK: Your Honor, if I could, before
14 Ms. Shaw -- just to sort of dot the I's.

15 Mr. Johnson waived his right to have an in-person
16 hearing, just so it's on the record.

17 THE COURT: All right. Mr. Johnson, if I could
18 get you to raise your right hand please?

19 JOHN O'NEIL JOHNSON, having been duly
20 sworn, testified as follows:

21 THE WITNESS: Yes, sir.

22 THE COURT: All right. Thank you very much. You
23 can put your hand down.

24 Now, this is a judicial review. By state law
25 you're entitled to a review of your case annually to

1 determine whether or not conditions have so changed that you
2 no longer pose a threat as a sexually violent predator.

3 Now, courtrooms are open and you're entitled to
4 appear in person and have your case heard. Given the
5 current state of affairs with the pandemic and COVID and all
6 of that, the Supreme Court has canceled in-person hearings,
7 except in cases of emergency or where the judge deems it
8 appropriate.

9 We have scheduled this hearing through the consent
10 of the attorneys involved to be handled remotely or through
11 this video conferencing. You have the right to appear
12 publicly or in person in court and have your judicial review
13 held or we can proceed in this matter if you waive that
14 right.

15 Do you want to appear in person or will you waive
16 your right to proceed in this way?

17 THE WITNESS: I'm going to waive my right to
18 proceed.

19 THE COURT: All right. Mr. Falk, anything further
20 you want on the record in that regard?

21 MR. FALK: No, Your Honor, thank you.

22 THE COURT: Ms. Shaw, anything further you want on
23 the record in that regard?

24 MS. SHAW: No. That was the first housekeeping
25 issue I was going to address, Your Honor.

1 THE COURT: All right. Anything else before we
2 get started?

3 MS. SHAW: No, Your Honor.

4 THE COURT: All right. Ms. Shaw, you can proceed.

5 MS. SHAW: Thank you, Your Honor.

6 This is Docket Number 2006-CP-26-07123. We are
7 here on annual review on Mr. Johnson's status in the
8 sexually violent predator treatment program at Wellpath
9 pursuant to South Carolina code section 44-48-110.

10 Excuse me. Per in the matter of Billy Ray Tucker
11 578 Southeast Second 719, South Carolina 2003. It is the
12 resident's burden to show probable cause, that his mental
13 status has so changed that he is now safe to be released
14 into the community. We have two experts here with us today,
15 Dr. Tross formerly of DMH, and Dr. Yadira Baez-Lockard on
16 behalf of Mr. Johnson.

17 It is Mr. Falk's burden moving forward and I
18 assume that he is going to attempt to qualify
19 Dr. Baez-Lockard, which the State does not consent to at
20 this time.

21 THE COURT: All right. All right, Mr. Falk
22 anything from you -- preliminary?

23 MR. FALK: Not other than I'd like to call
24 Dr. Lockard to get her admitted as an expert.

25 THE COURT: Okay.

DR. BAEZ-LOCKARD -DIRECT VOIR DIRE BY MR. FALK

1 MS. SHAW: And, Mr. Falk, before you begin, your
2 voir dire, could you just specify what you're specifically
3 seeking she be qualified as an expert in?

4 MR. FALK: Have her qualified as an expert in
5 forensic psychology and sexually violent predator
6 assessments.

7 MS. SHAW: Thank you.

8 THE COURT: All right. And I apologize,
9 Dr. Baez-Lockard, am I pronouncing that correctly?

10 MS. BAEZ-LOCKARD: Yes, Your Honor.

11 THE COURT: All right. Thank you very much. If I
12 could get you to raise your right hand, please.

13 YADIRA BAEZ-LOCKARD, having been duly
14 sworn, testified as follows:

15 THE WITNESS: I do.

16 THE COURT: All right. And could you please give
17 the court reporter your full name?

18 THE WITNESS: Yadira Baez-Lockard. First name is
19 spelled Y-A-D-I-R-A. Baez, B-A-E-Z. Lockard,
20 L-O-C-K-A-R-D.

21 THE COURT: All right, Mr. Falk.

22 DIRECT VOIR DIRE

23 BY MR. FALK:

24 Q. Dr. Lockard, I'm looking at your most recent CV
25 that you supplied me and I believe I sent this to the

DR. BAEZ-LOCKARD -DIRECT VOIR DIRE BY MR. FALK

1 solicitor's -- to the Attorney General's office and I just
2 want to kind of go through your educational background to
3 start with.

4 It shows that you are -- received a doctorate in
5 clinical psychology from the Adler School of Professional
6 Psychology in Chicago; is that correct?

7 A. That is correct.

8 Q. All I had a minute to kind of do a little research
9 on the Adler School and I looked on their web page and it
10 said that the school's focus has a focus on incarcerated and
11 formerly incarcerated individuals. Do you think that's an
12 accurate assessment of the school?

13 A. It is.

14 Q. Did the school establish a group therapy program
15 for Cook County inmates?

16 A. That is correct.

17 Q. And, again, looking on the web page, it says that
18 the school was accredited to award master's degrees in 1978?

19 A. Yes.

20 Q. Does that sound right to you?

21 A. Yes, it's accredited for master's as well as the
22 doctorate.

23 Q. And the doctorate degree was 1987?

24 A. Yes.

25 Q. Now, when I look on your CV, you have a doctorate

DR. BAEZ-LOCKARD -DIRECT VOIR DIRE BY MR. FALK

1 in clinical psychology, then it says a specialization in
2 forensics. Can you explain to the court what that means?

3 A. It means that from the moment that you start the
4 program, meaning year one, every single practicum as well as
5 the bulk of our research is going to be in forensics. So
6 every year we have a practicum that are all year long. You
7 accumulate hours and every single hours is in the forensic
8 setting.

9 Q. So, do people graduate from the Adler School of
10 Psychology with a different type of specialization?

11 A. They can choose to have just a general clinical
12 psychology degree. A lot of individuals like myself are
13 able to pick a specialization, or a track as it's also known
14 in other schools, and what that means, again, is that your
15 clinical hours as well as your internship is all in that
16 specific field.

17 Q. Okay. And is that the same for the -- your
18 master's degree for the forensic track?

19 A. For the master's degree we also have the ability
20 to have a clinical forensic educational, just as well.

21 Q. And then I'm kind of walking through -- in your
22 license, are you licensed to practice in South Carolina?

23 A. Yes, I am.

24 Q. Practice psychology in South Carolina?

25 A. Yes.

DR. BAEZ-LOCKARD -DIRECT VOIR DIRE BY MR. FALK

1 Q. Now, I'm walking through there and you have a
2 section where you talk about your clinical practice and your
3 forensic practice. Can you tell me how many times have you
4 been retained to provide an opinion or an evaluation as a
5 forensic psychologist to lawyers or courts?

6 A. In the state of South Carolina or ---

7 Q. Ever since you were awarded your doctorate.

8 A. I have testified in over a hundred cases.

9 Q. I'm not -- in addition to you testifying have you
10 been retained to provide opinions to lawyers that does not
11 result in you testifying?

12 A. Yes. I'm also a consultant, yes.

13 Q. Okay. And how many times have you been admitted
14 to testify as an expert in forensic psychology in courts of
15 South Carolina?

16 A. In South Carolina, I'd say over 50, 60 times.

17 Q. Okay. And sort of narrowing it down, how many
18 times have you been retained to provide an opinion, not
19 necessarily resulting in testimony, but just an opinion to
20 lawyers in sexually violent predator cases in
21 South Carolina?

22 A. I would say I had over 200 evaluations just where
23 I was retained just as a consultant. I stopped keeping
24 track.

25 Q. So when you talk about retained as a consultant,

DR. BAEZ-LOCKARD -DIRECT VOIR DIRE BY MR. FALK

1 does that mean that possibly somebody sent you annual review
2 materials, you provided an independent evaluation, but you
3 were -- for whatever reason you did not testify in court?

4 Is that what you mean as a consultant?

5 A. Yes, that's part of it. And other cases, which
6 are my federal cases, working with the military for those
7 specific cases as a consultant, we do get to review all of
8 the information. And even though in all of my cases I have
9 testified, however, as a consultant you get to be there for
10 the entirety of the case and providing different assistance
11 to the attorney working with that specific individual.

12 Q. Okay. Do you know how many times you've been
13 admitted to testify in a court in South Carolina in a
14 sexually violent predator action?

15 A. For the SVP, I believe this will be my third time.

16 Q. Thank you. Have you done any testifying in SVP
17 sort of related procedures in other courts in other states?

18 A. Yes, I have.

19 Q. Can you explain that to me?

20 A. So when I was up in Illinois, Chicago, I was able
21 to do evaluations as well for sexually violent predators.
22 Also in regards to sexually violent individuals, I've also
23 testified with the courts in the military -- system.

24 THE COURT: I'm sorry, in what system?

25 THE WITNESS: Working with the military, as well

DR. BAEZ-LOCKARD -DIRECT VOIR DIRE BY MR. FALK

1 for the sexually violent.

2 THE COURT: All right. Thank you. Go ahead.

3 BY MR. FALK:

4 Q. I'm not familiar with that. Can you explain what
5 this practice is with the military and sexually violent
6 predators?

7 A. Yeah. So it's a court martial and you can be with
8 the defense or work with the government. And they are --
9 the individual is accused, there's allegations and as an
10 expert, we look at all the information. We get to interview
11 the perpetrator as well as the alleged victim and we get a
12 chance to provide our -- specific information related to the
13 case. And then we also testify, whether it is in regards to
14 any specific information regarding the case. Some of our
15 cases are due to sexually violent in addition to substance
16 abuse. So we get to look at all the different factors that
17 factor into that specific case.

18 Q. So with these military cases, as part of your
19 inquiry identifying whether or not the individual suffers
20 from a mental abnormality or personality defect, what is the
21 likelihood to recidivate?

22 A. For some of our cases, yes.

23 Q. Okay. And so you also have a clinical practice;
24 is that correct?

25 A. Yes, I also have a clinical practice. And before

DR. BAEZ-LOCKARD -DIRECT VOIR DIRE BY MR. FALK

1 I also forget, Mr. Falk, part of my specialty when I was
2 going through the Adler school, I completed my internship or
3 residency also in Kentucky and that was in the -- working
4 with sex offenders. And that is -- I was responsible for
5 doing the evaluations for those individuals as well as
6 treatment for them.

7 Q. So is that the LaGrange Reformatory?

8 A. Yes, sir.

9 Q. That was about 30 minutes from my house. It's
10 kind of a dismal place once you get inside the walls.

11 A. Yes, it is.

12 Q. So you did do evaluations in Kentucky regarding
13 sex offenders, is that -- because they have, in Kentucky
14 they have sex offender -- I think it's called SO ---

15 A. SOTP.

16 Q. SOTP, right. And in order -- in Kentucky that's
17 sort of a prerequisite, for parole eligibility, is
18 successful completion of sex offender SOTP; is that correct?

19 A. That is correct.

20 Q. Okay. So, again, when you're doing those cases in
21 Kentucky the focus is on whether or not they have a mental
22 disease, a personality defect and the likelihood of
23 recidivism; is that correct?

24 A. That is correct, especially recidivism. The head
25 of the program, he trained specifically with Hanson, who is

DR. BAEZ-LOCKARD -DIRECT VOIR DIRE BY MR. FALK

1 the individual that developed the Static-99. So our -- the
2 SOTP program was really big in regards to the statistics and
3 the research as it relates to recidivism rates.

4 Q. Thank you. Then again getting back to your
5 clinical practice, so how many hours a month would you say
6 is devoted to your clinical practice?

7 A. To my clinical practice, nowadays about 30 percent
8 is about clinical.

9 Q. Okay. It says you have a special focus on
10 effective mood disorders, etc, issues of sexual paraphilia
11 and sexual functioning -- transgender -- SRS-related
12 treatment. So what types of patients -- patients who you
13 are seeing in that context, what types of conditions are
14 they suffering from?

15 A. We -- my practice really sees just about anything
16 that is in the DSM-5. I -- not only myself, but I also have
17 approximately 15 or 20 providers in my practice, so I do
18 oversee just about anything, or at least it feels like just
19 about anything on the DSM. So that includes anywhere
20 between mood disorders to personality disorders to sexual
21 dysfunction disorders. It's just a wide range of cases.

22 Q. Is it helpful when you are providing forensic
23 evaluations to also have a current practice where you're
24 actually seeing patients? I mean, does sort of discipline
25 inform the other one?

DR. BAEZ-LOCKARD -DIRECT VOIR DIRE BY MR. FALK

1 A. It definitely provides a deeper understanding of
2 the individuals that we're working with because we're able
3 to do both things. We're able to provide that treatment and
4 get a chance to understand more of what's going on with that
5 individual, not just simply doing that in evaluation where
6 we may meet the individual only once or twice. Whereas with
7 treatment, it can go, especially if we're doing group for
8 sex offenders, it can go for a year or two and we're able to
9 look at different aspects of that individual.

10 Q. There's some -- so you explained there's something
11 in that paragraph where they talk about psychodiagnostic
12 testing. What is that?

13 A. Part of my practice is also doing diagnostic
14 clarification. So majority of the time they tend to be
15 children to adolescents and working with individuals with
16 autism. Also doing evaluations for individuals that have
17 had a diagnosis of autism that have also committed a -- some
18 type of crime as well.

19 Q. And what is your work as a contracted treatment
20 provider for Health and Human Services and the Department of
21 Social Services? Is that the United States Department of
22 Health and Human Services? Or is that South Carolina DHS?

23 A. It's -- part of it is with South Carolina and we
24 have a contract with them to provide treatment.

25 Q. Okay. In what types of patients do you provide

DR. BAEZ-LOCKARD -DIRECT VOIR DIRE BY MR. FALK

1 treatment?

2 A. For individuals with mood disorder, personality
3 disorders, children, adults.

4 Q. Okay. I guess I'm come back around -- so,
5 specifically, with regard to sexually violent predator
6 assessments, how many did you estimate that you have done
7 since you've been in South Carolina?

8 A. The evaluations or testifying?

9 Q. Evaluations.

10 A. At this point, I believe I have done over 75
11 evaluations so far in South Carolina, maybe more. I've not
12 counted them, I'm sorry.

13 Q. And you've done other similar evaluations while
14 you were in Kentucky; is that correct?

15 A. Yes.

16 Q. Let me just move forward, please. I'm going
17 through the section where they talk about your current
18 professional activities. One of them I was just not aware
19 of, it says R3 Continuum, psychology for pre-employment.

20 What is that?

21 A. I'm sorry, where?

22 Q. On Page 4 of your CV under the heading of Current
23 Other Professional Activities. There is something that says
24 R3 Continuum and then it says Psychologists for
25 Pre-Employment Evaluations. I think that's for duty

DR. BAEZ-LOCKARD -DIRECT VOIR DIRE BY MR. FALK

1 evaluations. What are those?

2 A. Yeah. So this is a contract -- I think the
3 company is in -- it's all over the United States and they
4 contract individual to do fitness for duty evaluations. So
5 the majority of the time, these tend to be police officers
6 as well as fire department individuals prior to them -- if
7 they discharge a weapon, if they're not allowed to return,
8 pre-employment meaning, prior to a police officer being
9 hired to be able to go through the training, they have to go
10 through a psychological evaluation.

11 Q. I'm looking at some of your selected lectures and
12 trainings and under 2019, we're looking at the American
13 College of Forensic Psychology. There's a -- the bottom of
14 the whole page says Adult Sexual Offender Risk Assessment
15 Management. What was that? Is that a presentation that you
16 made?

17 A. Not a presentation that I -- that I was -- that I
18 made myself, no. This is a part of the training with
19 continuing education.

20 Q. Oh, I see. So how many hours would that have
21 been?

22 A. For that specific training that was two days, that
23 was approximately 60 hours.

24 Q. Okay. And you had some -- I don't know if this
25 was a training. In 2018, the American College of Forensic

DR. BAEZ-LOCKARD CROSS VOIR DIRE BY MS. SHAW

1 Psychology, it says, Resorting to Extreme Measures Due to
2 Sexual Dangerousness in Sexually Violent Predators Civil
3 Commitment, Psychological Evaluations. Is that another
4 training or is that a presentation?

5 A. That was another training.

6 Q. Okay. And about how many hours was that?

7 A. That one, I believe, was approximately
8 eight hours.

9 Q. Okay. All right. So you said while you were an
10 intern or one of your -- for one year you were almost
11 exclusively doing these types of evaluations while you were
12 in Kentucky at the LaGrange Reformatory; is that correct?

13 A. Yes, sir.

14 Q. Okay.

15 MR. FALK: Your Honor, I would move to have
16 Dr. Lockard admitted in the field of forensic psychology and
17 in the field of sexually violent predator assessment.

18 THE COURT: All right. Ms. Shaw, any questions or
19 challenges?

20 MS. SHAW: Yes, Your Honor, we have a substantial
21 number of challenges. If I may proceed?

22 THE COURT: All right.

23 CROSS-EXAMINATION VOIR DIRE

24 BY MS. SHAW:

25 Q. Dr. Baez-Lockard, you reported that you got your

DR. BAEZ-LOCKARD CROSS VOIR DIRE BY MS. SHAW

1 doctorate in clinical psychology with a specialization in
2 forensics in 2013, correct?

3 A. Yes.

4 Q. Okay. And is it in fact true that the course
5 catalog for Adler doesn't have -- not specialize any sort of
6 forensics? There's nothing in that catalog that says you
7 can have a specialization in forensics with your degree?

8 A. No. We do have it in our catalog where we have a
9 forensic track.

10 Q. Okay. Now, in 2009, you claim you went to -- you
11 graduated with a master's from Adler in counseling
12 psychology with a specialization in forensics and hypnosis,
13 correct?

14 A. Yes.

15 Q. And isn't it true that in fact Adler did not offer
16 a specialization in forensics until 2010, after you
17 graduated?

18 A. I couldn't tell you if they offered it in 2008 or
19 what year, I just know that our school, it was all in
20 forensics and all of our practicums were in forensics.

21 Q. Okay. Well, if I were to show you the catalog
22 which -- from 2009 -- which says there is no specialization
23 in forensics that they offer, would you be surprised that
24 that's what it said?

25 A. I would, yes.

1 Q. Okay. Now also in your claim that you have a
2 specialization in hypnosis, are you aware that Adler only
3 offered that during the 2008 and '09 year and they removed
4 it following your graduation?

5 A. I was not aware of whether or not they removed.
6 And it's a certificate, yes, in clinical hypnosis.

7 Q. Okay. And how many classes are required to get
8 that certificate?

9 A. I would have look back to be able to tell you how
10 many classes.

11 Q. Well, do you think it's more than five or less?

12 A. It would have been more than five.

13 Q. Okay. Would it surprise you to know that the
14 catalog says there's only three classes required to get that
15 certificate?

16 A. I would be surprised, yes.

17 Q. Okay. And are you also aware that in 2009 and '10
18 that that specialization was moved to the doctoral program
19 only? So it's impossible that you graduated with that?

20 A. I don't know if they moved it or not. I'll be
21 more than happy to take a picture it's standing right there
22 how it shows my degree.

23 Q. Okay. Now, you claim that you were licensed on
24 November 21st of 2014 in the state of South Carolina,
25 correct?

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1 A. I don't remember exactly the date.

2 Q. Well, you have your certificate, right?

3 A. For the -- yes, it's in here, yes.

4 Q. Okay. What's the date on it?

5 A. I would need to get up and go look at it.

6 Q. Go ahead.

7 A. November 21st.

8 Q. Of what year?

9 A. 2014, yes.

10 Q. Okay. So you've been practicing roughly -- a
11 little, about six years, correct?

12 A. Yes.

13 Q. Okay. So you claim that you have specialties in
14 forensics and SVP work. Are you board certified as a
15 specialist in forensics?

16 A. No, I'm not ABFP, no.

17 Q. Okay. And to claim that designation isn't it in
18 fact recommended by your ethical rules that you actually
19 have a board certification if you want to claim expertise in
20 a particular area?

21 A. No. You do not need to have a board certification.
22 That's also depending on the amount of hours that you have
23 not only done training but also worked in the field.

24 Q. Okay. Is there any reviewing body which would
25 sanction your claim of that expertise based on your

1 education and background.

2 A. I'm sorry, can you repeat that again?

3 Q. Is there any sanctioning body that would note or
4 issue a certificate or any sort of confirmation that you in
5 fact are an expert based on your education and training if
6 you're not board certified?

7 A. It would be up to the individual to be able to
8 keep track of hours and the amount of work that they have
9 done within the field.

10 Q. Okay. So you're saying that there is no board or
11 organization which would in fact confirm that you are an
12 expert based on your education and history?

13 A. Are you referring to the -- for the board
14 certification? The ABFP certification? I'm sorry, I'm not
15 understanding your question.

16 Q. Well, I thought I was quite clear. Board
17 certified is a very specific designation and that's issued
18 by the American Board of Professional Psychologists,
19 correct?

20 A. That is correct.

21 Q. And you don't have that certification, do you?

22 A. That is correct.

23 MR. FALK: Your Honor, I'm going to object.

24 THE COURT: Hold for a second. Mr. Falk?

25 MR. FALK: I believe that this inquiry here is

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1 really going beyond the scope of having her admitted as an
2 expert in this case.

3 If we look at 702 SCRE, you know, she's qualified
4 to testify as an expert if scientific, technical, or other
5 specialized knowledge will assist the trier of fact to
6 understand the evidence or to determine a fact in issue.

7 The trier of fact in this case is going to be the
8 jury. Now, if there are issues regarding whether one expert
9 is more qualified than another, that is a jury question for
10 the jury to evaluate. You know, South Carolina has a
11 threshold that she has more information in this field based
12 on her training and expertise to testify in this area than
13 the finder of fact. It would inform the finder of fact.

14 I mean, if we're getting into that Dr. Tross is
15 more qualified, and certainly board certification is not a
16 prerequisite to testify as an expert in a field ---

17 THE COURT: Well, I think Ms. Shaw can still
18 challenge her qualifications. So I'm gonna still allow the
19 question. I overrule your objection.

20 MS. SHAW: Thank you, Your Honor. And just for
21 the record, this is not a question of whether Dr. Tross is
22 more credible or more qualified or whether Dr. Baez-Lockard
23 is more credible or qualified. It's a question of
24 Dr. Baez-Lockard's basic qualifications and whether she
25 should be permitted to render an opinion in an SVP matter at

1 all.

2 THE COURT: Well, is it your argument that she is
3 not an expert because she's not board qualified -- board
4 certified?

5 MS. SHAW: No, Your Honor, that is not -- the
6 board certification or lack thereof is not the basis. So, I
7 am ---

8 THE COURT: So what's the relevancy of your
9 questioning then?

10 MS. SHAW: The relevancy is going to her claims to
11 expertise which are not supported by the actual facts.

12 THE COURT: But what does board certification have
13 to do with it? If you're not trying to say your expert is a
14 better expert than their expert, but you admit that board
15 certification is not a qualification for expertise, then
16 what is the reason for the questioning?

17 MS. SHAW: It's one of the factors that will go
18 toward the Court being able to find that she is or is not an
19 expert. There's a lot more that I have to go through on
20 this matter, Your Honor.

21 THE COURT: And I understand that. But if board
22 certification is not a criteria, then what difference does
23 it make whether she's not board certified or whether your
24 expert is board certified?

25 MS. SHAW: Your Honor, it's relevant to inaccurate

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1 claims on her resume.

2 THE COURT: Okay. Go ahead. So on her resume,
3 she says she's board certified?

4 MS. SHAW: She does not, but she claims specific
5 expertise in areas where she does not have an education or
6 training. The board certification is just one issue and I
7 will move on from that.

8 THE COURT: All right. Go ahead.

9 BY MS. SHAW:

10 Q. Thank you, Your Honor. Now, you previously -- you
11 stated, Dr. Baez-Lockard, that you previously testified in
12 three SVP cases in the state of South Carolina, correct?

13 A. This will be my third case, correct.

14 Q. Okay. Do you recall in the matter of the care and
15 treatment of Craig Carroll from January 16, 2020? Roughly?

16 A. Yes.

17 Q. Do you remember if you were testifying in front of
18 Judge Young?

19 A. I do not recall who the judge was.

20 (Phone Interruption)

21 THE COURT: Hold on for a second. Somebody's
22 phone is going off.

23 BY MS. SHAW:

24 Q. So I have a copy of the transcript of that hearing
25 and on Page 13 of the transcript, Lines 15 and 16 -- if

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1 there's anybody who would like a copy of this transcript
2 I'll be happy to provide it -- you claim to be a licensed
3 psychologist in the field of forensic and clinical
4 psychology, correct?

5 A. I'm looking for the document as I have it in here.
6 You said at Page 13?

7 Q. Page 13, Lines 15 and 16.

8 A. Okay.

9 Q. Do you recall saying that?

10 A. It's what it states in there. I couldn't tell you
11 if I remember that specific day, but that's what it states.
12 So, yes.

13 Q. Okay. But in fact South Carolina does not issue
14 licenses for forensic or clinical psychologists do they?
15 They just issue a primary license.

16 A. They practice (sic) a license to practice in the
17 state of South Carolina.

18 Q. Okay, but the state of South Carolina doesn't
19 issue any sort of individual license for forensics or
20 clinical psychology?

21 A. That is correct.

22 Q. So you in fact only have a primary license, you
23 don't have specialty according to the state?

24 A. According to the state, yes, I have a license to
25 practice in the field of psychology.

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1 Q. And you claimed in that year while you were
2 working in Kentucky that you did evaluations as well as
3 treatment for sex offenders and that was your, quote,
4 speciality, correct?

5 A. That is correct. You had to pick a specific area,
6 rotation area, that you would have do the entire time that
7 you were at your internship and residency.

8 Q. Okay. And your resume also mentions --

9 THE COURT: Hold on for a second. Wait a minute,
10 we can't hear. There's some noise coming in through
11 somebody's ---

12 MR. FALK: Sorry, Your Honor, there was firetruck
13 coming down Broad Street. Could I hear that last question
14 again?

15 MS. SHAW: I'll repeat it, Your Honor.

16 BY MS. SHAW:

17 Q. And you also note on your resume that you worked
18 at the Kentucky Department of Corrections as a forensic and
19 clinical psychology resident, correct?

20 A. That is correct.

21 Q. And on your CV you have underlined that you
22 provided services in general psychological services,
23 correctional psychiatric treatment unit, sex offender
24 treatment program and women's services, correct?

25 A. That is correct.

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1 Q. So that's actually a four-rotation residency,
2 isn't it?

3 A. I could not tell you exactly how many rotations
4 there were, because there are several other rotations that I
5 did not list it as well. But some of the rotations you get
6 a chance to do all year, so you have a major and a minor
7 rotation.

8 Q. Uh-huh.

9 A. So my -- the sex offender is the rotation that you
10 don't get to move from. You get to do it the entire time
11 that you are there.

12 Q. Uh-huh. So are you claiming that, in fact, you
13 were doing sex offender treatments and assessments the whole
14 time you were there despite the fact that you claimed four
15 other rotations on your CV? Is that your testimony,
16 Dr. Baez-Lockard?

17 A. Yes, ma'am?

18 Q. Could you please answer the question?

19 A. I did not hear the question, it went in and out.

20 Q. Okay, I'll repeat it. Is it your claim that you
21 in fact were doing sex offender assessments and treatment
22 the whole time you were in Kentucky, even though you were
23 claiming four separate rotations on your resume?

24 A. I guess I'm not understanding your question. If
25 you can clarify?

1 Q. You just said you could choose a major and a minor
2 concentration, right?

3 A. We have to have our main concentration and then we
4 rotate through the other ones.

5 Q. Uh-huh. Okay. And when you're on your rotations,
6 you were doing work only for those other rotations?

7 A. No.

8 Q. Okay.

9 A. It just means that either one or two days, I don't
10 recall how many days a week, we had to be in that specific
11 rotation versus being in one specific area every single day
12 of the week.

13 Q. Okay. So is it your claim that you were in fact
14 doing sex offender evaluations and treatment the whole time
15 you were working in Kentucky in addition to three other
16 rotations?

17 A. Yes, I was doing sex offender treatments as well
18 as the evaluations the entire time that I was there and we
19 also rotate through the other areas as well.

20 Q. So, how long is the average rotation,
21 three months?

22 A. Three, four months, I would assume, yes.

23 Q. Okay. So you did four rotations in a one-year
24 period, right?

25 A. I worked the SVPT unit and -- with the women, also

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1 the sex offender with the women -- that specific program and
2 general services as well. I did not do the geriatric
3 treatment. Yes, so those were the rotations, the main
4 rotations. I'm sure I'm leaving one of them out.

5 Q. Okay. So you spent about three or four months in
6 each rotation?

7 A. Correct.

8 Q. Okay. So getting back to your 2013, '14
9 experience. We were able to obtain the supervision contract
10 regarding your employment at Cannon Psychological
11 Associates. Do you recall working there for a year in 2013,
12 '14?

13 A. I worked there for a little bit over a year, but,
14 yes.

15 Q. Are you -- do you recall that your contract with
16 David Cannon did not contain any reference two forensic
17 evaluations?

18 A. I do not recall that information ---

19 MR. FALK: Your Honor, I'm not sure I know what
20 this -- again, I'm objecting. This seems to be far afield
21 from what we need to do here. I'm not claiming anything
22 with that as the basis for her expertise.

23 THE COURT: All right. Overruled. I'll let her
24 get on the record whatever she wants. Go ahead.

25 MS. SHAW: Thank you, Your Honor.

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1 THE COURT: Not whatever she wants, but as it
2 pertains to qualifications. I'm assuming she's going to tie
3 this in at some point in time. All right.

4 Go ahead, Ms. Shaw.

5 MS. SHAW: Thank you, Your Honor.

6 BY MS. SHAW:

7 Q. But would it surprise you to recall that that
8 contract contained no reference to doing any sort of
9 forensic work?

10 A. Would it surprise me? We do the contract at the
11 time and when I started the contract, may or may not know
12 the extent of all the work that I'm going to be doing at
13 that specific place.

14 Q. Okay. And you were still a PsyD student in 2013,
15 correct?

16 A. Was I considered a PsyD student? No, because I
17 got my license in 2014. So, no, I would have already -- not
18 be considered a student, no.

19 Q. So, well, your resume says 2013 is when you earned
20 your degree. Presumably you were on a regular educational
21 track and graduated around May, correct?

22 A. Yes.

23 Q. Okay. So a student at some point in 2013?

24 A. Yes, I'm sorry. I thought you meant when I was
25 here in Clemson, South Carolina. I was not a student.

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1 Q. Okay. And once you graduated, you were required
2 to do a supervised clinical practice, correct? Whatever you
3 do, you were required to be supervised?

4 A. Yes, a fellowship, yes.

5 Q. And how long is that requirement? Like, how long
6 do you have to be supervised for?

7 A. Approximately a year. It also goes by hours.

8 Q. Okay. Yet on your resume -- or your CV, excuse
9 me, you claim that you had a clinical and forensic practice
10 starting in 2013 immediately after you graduated and when
11 you were supposed to be being supervised, correct?

12 A. In private practice? Yes, I was in private
13 practice starting 2013.

14 Q. And was Mr. Cannon supervising your personal
15 private practice while you worked for him or was anybody
16 supervising you?

17 A. Once I completed all of my hours with Dr. Cannon,
18 then, at that point, I did not need to be supervised, no.

19 Q. But you didn't complete those hours with
20 Dr. Cannon until 2014, correct?

21 A. That is correct.

22 Q. So you were practicing in 2013 without
23 supervision, contrary to the rules?

24 A. No, I was practicing with supervision.

25 Q. Well, you just said that Dr. Cannon didn't

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1 supervisor your clinical practice.

2 A. No, I said that he did not practice -- once I
3 finished my hours, he did not have to supervise me.

4 Q. Well, that's understood, but you didn't finish
5 those hours until 2014 and you're claiming that you've been
6 in clinical practice since 2013.

7 A. That is correct.

8 Q. So you weren't being supervised?

9 A. No, he was supervising me.

10 Q. He was supervising you through Cannon
11 Psychological Associates, right?

12 A. That is correct, as well as, as I was starting
13 also developing my practice at the time, he was able to
14 supervise as well.

15 Q. So you're claiming he was supervising you for both
16 your private practice as well as his own?

17 A. He was supervising me as I was setting up and
18 putting together my practice and doing evaluations at the
19 time. I could not -- at the time didn't have my LLC,
20 because I did not have my full time practice. As a result,
21 no, he can't or any individual cannot be with me in practice
22 if I'm not fully licensed at the time.

23 Q. So you were actually practicing without a license
24 in 2013 and without supervision?

25 A. That is not correct. I said that every -- and

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1 I'll say it again. I have worked under the supervision of
2 Dr. Cannon.

3 Q. In his practice, but there's nothing out there
4 that indicates he was supervising you with your own and
5 that's the concern. That's what your resume also says,
6 ma'am.

7 So let's go to your experience with Kentucky,
8 again. Isn't it true that sex offender or intake
9 assessments are not the same as risk assessments?

10 A. Intake assessment versus risk assessment,
11 they're -- yes, I'd say that they're two separate things.

12 Q. And sex offender treatment is certainly different
13 than a risk assessment?

14 A. That is correct.

15 Q. And you were doing the intake assessments at
16 Kentucky, right?

17 A. I was doing those as well as the evaluations as
18 well as the treatment.

19 Q. Can you tell us how many of each you did?

20 A. I -- no, unfortunately cannot tell you how many we
21 did.

22 Q. Was it more or less than 10?

23 A. Yes, it would be more than 10.

24 Q. Okay. Now, Kentucky isn't in SVP Act state, is
25 it?

1 A. That is correct.

2 Q. So you did not have, in fact, the requirements of
3 any Sexually Violent Predator law to adhere to and take into
4 account when you are doing your assessments, correct?

5 A. That is correct.

6 Q. Okay. So this three months or four months of
7 experience specifically dedicated to sex offenders in
8 Kentucky wasn't really even applicable to an SVP-type case,
9 was it?

10 A. You are incorrect. The training was one year
11 long, it was not three or four months.

12 Q. Well, you testified that the rotations were three
13 to four months. I know that it had been a year program.

14 A. The sex offender is not -- again, it is not a
15 three to four-month rotation. It is a yearly long -- it is
16 your special distinction when you are doing your specific
17 residency/internship.

18 Q. Okay. Now, Illinois in fact does have an SVP law,
19 correct?

20 A. That is correct.

21 Q. All right. Now, you claim that while in Chicago
22 you worked for Innovations in Learning in Merrillville,
23 Indiana as well the Center for Applied Forensic Sciences in
24 Chicago. Do you remember that?

25 A. Yes.

1 Q. Okay. Now, you claim to be doing fitness for duty
2 evaluations for police officers and you also claimed when
3 you were testifying in Carroll that you did evaluations for
4 the clergy. That is not in your resume. Can you explain
5 that?

6 A. Are you asking me to explain why it's not on my
7 resume or would you like me to explain the extent of what I
8 did?

9 Q. No, I just want to know why it's not on your
10 resume if you were going to claim it when you were
11 testifying.

12 A. Perhaps an oversight.

13 Q. Okay. And in Illinois did you actually have any
14 experience doing evaluations for civil commitment procedures
15 rather than fitness for duty evaluations?

16 A. Yes, with the center for to applied forensics
17 studies in psychology. That was part of the work that we
18 did as well. It wasn't just fitness for duty evaluations.
19 The bulk of our work was fitness for duty evaluations,
20 however, we were also responsible for doing the evaluations
21 that were related to sexually violent individuals as well
22 as, like I said, our biggest case was the one with the
23 clergy.

24 Q. Uh-huh. So your biggest case was with the clergy?

25 A. That is correct.

1 Q. Okay. But those civil commitment trials and the
2 information about the clergy didn't get into your resume?

3 A. That is -- yes, that is correct.

4 Q. Because I'm reading right here, forensic
5 evaluations and civil including competency to stand trial,
6 intellectual functioning and sexual offender. There's
7 nothing about civil commitments.

8 A. As I mentioned, it's something that was an
9 oversight that I will make sure that I add that in there.

10 Q. All right. Now, 2010/11, you were still a
11 master's level student and presumably in the PsyD program,
12 yet you claimed to be a psychological consultant for
13 Patricia Hoyos?

14 A. That is correct.

15 Q. Okay. Are master's level clinicians typically
16 permitted to engage in forensic evaluations?

17 A. Yes, they can.

18 Q. And did Ms. Hoyos supervise you?

19 A. She did.

20 Q. And did you do any evaluations while you were
21 working with her?

22 A. I did.

23 Q. Sex offender evaluations?

24 A. We did evaluations related to sexual abuse cases,
25 not with the Sexually Violent Predator Act, no.

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1 Q. So that particular experience, while certainly
2 good for your career, does not include any SVP defendants?

3 A. Not for that specific individual, no.

4 Q. Okay. And I have another question. Adler is in
5 downtown Chicago, right?

6 A. Yes, they have moved several times, but I believe
7 it is still downtown.

8 Q. Okay. And from 2008 through roughly 2011 you were
9 working primarily in Indiana. And I did a little Google map
10 and each of these locations where you claimed to have worked
11 is a minimum of 41 minutes from where Adler is located.
12 Were you doing an online coursework or were you actually
13 going to school physically?

14 A. No, I was in school physically. At the time I
15 don't believe we had an online program, but I might be
16 mistaken.

17 Q. Okay. Well, did you do any of your coursework
18 online?

19 A. I did not.

20 Q. Now, you claim to be a court consultant while you
21 were still a master's with Family House, Inc. of Valparaiso.

22 Do you recall that?

23 A. Yes.

24 Q. Did any of that work include SVP work?

25 A. No, that one did not.

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1 Q. Okay. And Samaritan Counseling Center Mental
2 Health for American for the County that didn't include any
3 SVP work either, did it?

4 A. No, just psychological evaluations.

5 Q. Same thing for Otis Bowen Center for Mental Health
6 Services, you didn't deal with any sort of sex offenders
7 there?

8 A. We worked with sex offenders however it was not
9 for the SVP act, no.

10 Q. And you claim to have been the program director
11 from 2002 to 2005 for Valparaiso Young Men Christian
12 Association. You were roughly 20 years old at that point,
13 and you didn't even have your bachelor's degree; is that
14 correct?

15 A. At the time, yes.

16 Q. Yet you still claim you were the program director?

17 A. I do not claim, ma'am, that was my title.

18 Q. Now, part of your professional activities, you're
19 required to do continuing education, correct?

20 A. That is correct.

21 Q. And if you're going to administer certain
22 actuarial assessments or standardized testing, shall we say,
23 you have to have training to complete that to be able to
24 complete those evaluations, right?

25 A. That is correct.

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1 Q. Okay. Do you have any training on how to
2 administer and score statics?

3 A. I sure do.

4 Q. When did you take it?

5 A. The first time it was when I was in Kentucky.

6 Q. Okay. So that was 2013?

7 A. I couldn't tell you exactly if it was in -- at the
8 end of 2013 or beginning of 2013 --

9 Q. Okay, well you claim to have been in Kentucky for
10 2012 to '13. So that's when you first took the static
11 training, right?

12 A. Correct.

13 Q. Have you taken any subsequent trainings?

14 A. In regards to the statics, yes. Throughout the
15 different -- the different trainings and whether it is with
16 the American College of Forensic Psychology or any other
17 organizations.

18 Q. Okay. Do you have any training to administer and
19 score the MMPI.?

20 A. I do.

21 Q. And when did you take that?

22 A. I don't know exactly the dates, but I have taken
23 that specific training.

24 Q. Okay. Do you have any specialized training to
25 administer the Hare Psychopathy profile?

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1 A. Yes, we have that training not only in school, we
2 also had it in Kentucky. In addition to that training in --
3 through the American College of Forensic Psychology.

4 Q. And you claimed that you had an affiliation with
5 the military in doing evaluations, correct?

6 A. That is correct.

7 Q. But that's not listed anywhere on your CV except
8 where list U.S. Veterans Affairs Psychological Examiner. Is
9 that what you mean by your military affiliation?

10 A. I'm sorry, and what page are you right now?

11 Q. I'm on page four of CV. It says U.S. Veterans
12 Affairs Psychological Examiner. Is that the military
13 experience you're claiming?

14 A. That's -- yeah, part of the experience yes.
15 That's -- as a psychological examiner for the U.S. -- for
16 the VA. However, the VA is completely different than
17 working with the court martial.

18 Q. There is nothing on your resume regarding working
19 with the court martials or any other military service. When
20 did you start this?

21 A. I would disagree with you, if you go on Page 1, it
22 talks about the forensic practice. It talks about --
23 fitness consultant of the United State Armed Forces and the
24 Military Court Martials.

25 Q. Which branch?

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1 A. We actually do evaluations for all the different
2 branches. However, the majority of my cases have been with
3 US Air Force.

4 Q. And when did you start taking that kind of work?

5 A. The court martials, I believe it was in 2015, I
6 believe.

7 Q. Would you happen to have any contracts that you
8 signed with the military to do this kind of work?

9 A. I do have contracts with them, yes. And you're
10 supposed to have a contract for each of the cases that you
11 have.

12 Q. But it's true that the military itself does not
13 actually have the equivalent of a Sexually Violent Predator
14 Act, do they?

15 A. No, it's a different type of -- yes, it's
16 different than the SVP Act.

17 Q. Okay. So that's not directly correlated to these
18 evaluations?

19 A. As it pertains to the statutes of South Carolina,
20 no you cannot say it's the same thing, no.

21 Q. All right. Thank you. Now, your teaching
22 experience you reported from 2012 to '15, you were an
23 adjunct professor, right? At Virginia College?

24 A. That is correct.

25 Q. You were aware that in 2018, that Virginia College

DR. BAEZ-LOCKARD CROSS VOIR DIRE BY MS. SHAW

1 was closed because it lost its accreditation?

2 A. I know that they were in the process of losing
3 accreditation -- losing their accreditation, yes.

4 Q. When you were teaching there?

5 A. I believe that that's what they were fighting on
6 this on, yes.

7 Q. Okay. But they still lost it. And you're aware
8 that the highest degree that was offered by Virginia College
9 was an associate's, right?

10 A. I'm not familiar with what was the highest degree,
11 no.

12 Q. Okay. Now, you also report experience as a TA and
13 as an adjunct at Adler. Yet there's no information in your
14 CV that there was any teaching or coursework that you
15 engaged in that was related to SVP-type defendants or cases
16 rather.

17 A. As a professor, the classes that were specifically
18 related to psychopathology and personality disorders that is
19 where we -- I address the sexually violent act, those types
20 of evaluations and risk assessment.

21 Q. Okay. Now, with regards to your professional
22 affiliations, claim that from 2016 to present you were a
23 Fellow with the International Association for Correctional
24 and Forensic Psychology, correct?

25 A. Correct.

DR. BAEZ-LOCKARD CROSS VOIR DIRE BY MS. SHAW

1 Q. And you also claim that you are a fellow in the
2 Association for Treatment of Sexual Abusers, correct?

3 A. Yeah, with the ATSA, yes.

4 Q. And you claim that that membership is from 2016 to
5 present?

6 A. I believe most recently, I believe it's getting
7 ready to be renewed. So I cannot tell you specifically as
8 of right now if the renew have gone through.

9 Q. Okay, well your resume says from 2016 to present
10 you have been a fellow.

11 A. I mean, that's my -- the title of where we had it
12 here, but if you're talking in regards to was I a fellow
13 from the moment from 2016 on or am I currently a fellow with
14 them?

15 Q. Well, your resume claims that you are a fellow and
16 you have been one from 2016 to present; is that true or
17 false?

18 A. I've been a fellow with ATSA, yes.

19 Q. Okay. Would it surprise you to know that we
20 checked about your membership with the ATSA and received an
21 email from Tegan Waring who is the membership coordinator,
22 that you in fact were not a member in 2016 nor were you a
23 member in 2017. You were active in 2018 and '19, but that
24 your 2020 and '21 membership has not been renewed and you
25 are not considered a fellow or a member at this point?

DR. BAEZ-LOCKARD CROSS VOIR DIRE BY MS. SHAW

1 A. Not as far as I knew.

2 Q. Well, the email is dated October 28th of 2020 at
3 8:38 p.m. That doesn't surprise you?

4 A. No, that actually does surprise me. Because I'm
5 close to renewing the certification.

6 Q. Well, are you also aware of the requirements to
7 become a fellow rather than just a member of the ATSA?

8 A. I don't remember exactly what all is required to
9 be a fellow. I don't remember that.

10 Q. Okay. But you're claiming that you are one?

11 A. Based on at the time, yes.

12 Q. Okay. So I'm going to read you the full
13 requirements which I've taken directly from -- and I'm going
14 to show the court this, it may be coming up backwards --
15 it's the ATSA ---

16 MR. FALK: Your Honor, I going renew my objection.

17 THE COURT: I overrule the objection. But I'll
18 have to admit, Ms. Shaw, once you held that up, I could not
19 see or read or understand or know what you are presenting.

20 MS. SHAW: Well, Your Honor, I'm not asking that
21 this be admitted. I'm using it for purposes of Cross, but I
22 just want everyone to know that this document I am about to
23 read from is the ATSA fellow application which we printed
24 out and I am now going to read the full requirements. If I
25 may.

DR. BAEZ-LOCKARD CROSS VOIR DIRE BY MS. SHAW

1 THE COURT: All right. Go ahead.

2 MS. SHAW: Thank you, Your Honor.

3 BY MS. SHAW:

4 Q. Dr. Baez-Lockard you are claiming you are a
5 fellow, but the first requirement is that you be in practice
6 and be a member of the ATSA for not less than seven
7 consecutive years.

8 A. I don't have that document in front of me, so...

9 Q. Well, I can give you the web site if you like.

10 A. Yes, that would be good.

11 Q. All right. We'll just go to atsa.com and then you
12 can go to the fellows page and all the requirements are
13 right there.

14 But in addition to a member of the ATSA for not
15 less than seven consecutive years, two letters must be
16 submitted supporting your submission for nomination as a
17 fellow. Did you ever get those letters?

18 A. My letters of recommendations, yes.

19 Q. You submitted it to the ATSA?

20 A. Yes, I did.

21 Q. The ATSA member should be outstanding in their
22 field and have made significant contributions to ATSA as
23 demonstrated by completing at least all requirements from
24 the following list: Involvement by serving on an ATSA
25 organization committee; involvement by serving in a local

1 chapter leadership role; organization of or major
2 participation in organized activity of the ATSA or your
3 local chapter; giving a professional presentation at an
4 annual conference; give a professional presentation at a
5 local chapter conference; publish a scientific or scholarly
6 article in the ATSA journal; publish a scientific or
7 scholarly article in the ATSA forum; serve as an editor,
8 associate editor or on the editorial board of the ATSA
9 journal or have reviewed at least 10 submissions to the
10 journal; publish an article on sexual offense assessment,
11 treatment or prevention in a peer-reviewed professional
12 journal other than the ATSA journal; participate in
13 furthering ATSA's contribution to public policy for the
14 prevention of sexual abuse by aiding with the creation of a
15 legislative or court response or press release; other major
16 contribution to ATSA.

17 Did you ever submit any information to ATSA
18 regarding these qualifications?

19 A. I submitted to ATSA my dissertation.

20 Q. Uh-huh. And was that published?

21 A. By the ATSA?

22 Q. Uh-huh.

23 A. Not that I'm aware of. It was not published,
24 because they do not publish these articles or documentation,
25 no.

DR. BAEZ-LOCKARD CROSS VOIR DIRE BY MS. SHAW

1 Q. Well, they publish in the journal, right?

2 A. In the ATSA journal, yeah, I mean, they could add
3 it into, yes.

4 Q. And you've never had anything published in that
5 journal, correct?

6 A. No, not in the ATSA, no.

7 Q. And you've never served on an organization
8 committee or held a chapter leadership role?

9 A. No, I have not.

10 Q. And what is the current chapter you claim to be a
11 member of?

12 A. In regards to the ATSA?

13 Q. Uh-huh.

14 A. I'm sorry, you're losing me here.

15 Q. Do you claim membership in any chapter of the
16 ATSA?

17 A. When it comes to the treatment of the sex
18 offenders.

19 Q. What chapter?

20 A. Would you like me to look up specifically what
21 chapter. Sorry my computer keeps going in and out. I'm
22 sorry, I don't have access to that. I'm not able to connect
23 to it.

24 Q. Okay. Well, do you remember completing the
25 fellowship application?

DR. BAEZ-LOCKARD CROSS VOIR DIRE BY MS. SHAW

1 A. I recall completing all the information regarding
2 to ATSA, yes.

3 Q. Okay. Well, the form requirements says you must
4 complete the fellowship application. Do you have a specific
5 memory of completing that aside from submitting documents
6 you claim to have done?

7 A. I cannot recall specific documentation or what was
8 submitted, when it was submitted, unfortunately I don't
9 recall that.

10 Q. Okay. The ATSA is kind of the gold standard for
11 sex offender evaluators, correct?

12 A. Yeah, it's one of the organizations, yes.

13 Q. Okay. You also claim that you are a fellow in the
14 American College of Forensic Examiners, correct?

15 A. Yes, I believe that one -- if I'm not mistaken, is
16 another one I'm waiting to hear in regards to renewal for
17 2021.

18 Q. Would it surprise you to know that this
19 organization has been shut down for years and is no longer
20 accredited?

21 A. I'm sorry, you were in and out.

22 Q. I said would it surprise you to know that this
23 organization has been shut down for years and is not
24 accredited?

25 A. Yeah, that would definitely surprise me.

DR. BAEZ-LOCKARD CROSS VOIR DIRE BY MS. SHAW

1 Q. Okay. And you claim to be a member in the
2 Kentucky Psychological Association and the American Society
3 of Clinical Hypnosis from the years 2012 and '13 and 2008 to
4 2010; is that correct?

5 A. Yes.

6 Q. You were a student at that time, correct?

7 A. During which time?

8 Q. Well, from 2008 through 2013 you were in your
9 master's and PsyD programs, right?

10 A. For -- during the Kentucky Psychological
11 Association at the time, yeah, when I was -- I was a member
12 of the case and I was a student and also doing my internship
13 at the time.

14 Q. So for these organizations, would it surprise you
15 to know that you actually have to have a license to be a
16 full member and that you have to be a graduate to be an
17 affiliate member?

18 A. For the KPA?

19 Q. For both of them.

20 A. Yeah, that would surprise me, since we were
21 members.

22 Q. Okay. Now, selected lectures and trainings, let's
23 refer you to Page 5. You claim that in 2019, you attended
24 the American College of Forensic Psychology and you have
25 three -- three seminars that you list. Are you seeing that?

DR. BAEZ-LOCKARD CROSS VOIR DIRE BY MS. SHAW

1 A. Yeah, sorry, it keeps going in and out.

2 Q. Are you seeing that portion of your CV?

3 A. Yes.

4 Q. Okay. I happen to have the curriculum and -- for
5 the 35th Annual Symposium which took place from March 28th
6 to 31st, 2019, in San Diego, California of the American
7 College of Forensic Psychology. Yet none of these three
8 seminars are listed on the agenda. There's roughly about
9 25, but not one of these is on there. Can you explain that?

10 A. I'm looking at it --

11 MR. FALK: Objection, Your Honor.

12 THE COURT: Excuse me. Mr. Falk?

13 MR. FALK: I mean, if she's got some -- I don't
14 even know what the basis of her question is. She's saying
15 that she has some information, that she's downloaded
16 something -- object to the form of the question.

17 THE COURT: All right. Ms. Shaw, you gotta lay
18 the foundation of what you're referring to. How you
19 obtained it, where it came from, and what the authority of
20 it is.

21 MS. SHAW: I will do that, Your Honor.

22 BY MS. SHAW:

23 Q. Dr. Baez-Lockard, you claimed that you attended
24 the American College of Forensic Psychology Annual Symposium
25 in 2019, correct?

DR. BAEZ-LOCKARD CROSS VOIR DIRE BY MS. SHAW

1 A. Yes.

2 Q. And do they give a roster of the seminars that are
3 listed over the several-day period that the symposium is
4 running?

5 A. They give you a -- different trainings that you
6 can -- that you can attend, yeah.

7 Q. Is there a list of trainings that you can attend?

8 A. Yes, they give you a -- they provide you with a
9 list, yes.

10 Q. Okay. And everything that they're offering is in
11 fact listed, right? So people can sign up for the courses?

12 A. Yeah, the majority of the time they have. We had,
13 actually one of ones that I went to there was some issues
14 with them and they changed them last minute, but, yes.

15 Q. Okay. And I'll represent to you that I have a
16 copy of that list. And ---

17 THE COURT: First, Ms. Shaw, where did you get the
18 copy? Who sent it to you? And how did you obtain it? How
19 do we know that that is the copy and how accurate it is?
20 That is what Mr. Falk is objecting to is that we don't know
21 where you got it, how you got it, or who authenticated it
22 for you?

23 MS. SHAW: We received this from DMH evaluators,
24 Your Honor. Our office requested it and we received it from
25 DMH.

DR. BAEZ-LOCKARD CROSS VOIR DIRE BY MS. SHAW

1 THE COURT: So how did they obtain it? I mean, is
2 this just a list, something you ran off the internet or
3 something that somebody ran off the internet?

4 MS. SHAW: No, this would be the list that was
5 given out at the symposium and if you'll, Your Honor, would
6 like I can have Dr. Tross authenticate it.

7 THE COURT: Well, I guess my question is, is this
8 something that she got when she attended, is that what
9 you're claiming?

10 MS. SHAW: It is a document that was obtained by
11 DMH from the College of Forensic psychology and they are the
12 organization that organized this symposium and put it on.

13 THE COURT: All right. How did they get it from
14 them?

15 MS. SHAW: Presumably, they would have attended or
16 you can get it from their website.

17 THE COURT: Okay. That's what I'm saying is if
18 you just ran something off of a website that's not
19 authentication. There's certain methods you have to go
20 through to authenticate something.

21 MS. SHAW: I understand that, Your Honor. And I
22 can have Dr. Tross authenticate the documents if the Court
23 would like me to, or I can just move on.

24 THE COURT: Well, let's just move on.

25 BY MS. SHAW:

DR. BAEZ-LOCKARD CROSS VOIR DIRE BY MS. SHAW

1 Q. All right. So, in addition to the 2019 seminars
2 you claim you attended, you also claim you attended the
3 Neurobiological Assessment Considerations in Juvenile
4 Transfers and Competency Evaluations in 2018 and the
5 Resorting to Extreme Measures to Prove a Sexual
6 Dangerousness in Sexually Violent Predators in Civil
7 Confinement Evaluations. And you claim that those were
8 68 hours, respectively. Do you remember that?

9 A. Yes.

10 Q. And are you sure that that was 2018?

11 A. I would refer to the document that is provided to
12 us, but there's a signature.

13 Q. I'm sorry. Go ahead.

14 A. But your question was can I verify if that was the
15 year that I had them signed? Was that your question?

16 Q. Are you sure you took those courses in 2018?

17 A. I can specifically verify that's the information
18 that I have in there. Again, if there's an oversight or a
19 mistake on that, I'm not a hundred percent sure because I
20 don't have the paper in front of me as I received the
21 signature from the individual when you attend the workshop.

22 Q. Uh-huh. Would it surprise you to know that those
23 courses were not offered in 2017 or '18, but were only
24 offered in 2016?

25 MR. FALK: Objection, Your Honor. This is the

DR. BAEZ-LOCKARD CROSS VOIR DIRE BY MS. SHAW

1 same thing. I don't know how -- what's the basis for
2 her ---

3 THE COURT: What's the basis, Ms. Shaw?

4 MS. SHAW: The basis for this line of questioning,
5 Your Honor, is that Dr. Baez-Lockard's CV is riddled with
6 inaccuracies and flat out falsification and the Court needs
7 to be aware of that.

8 THE COURT: All right. Overruled, go ahead.

9 MS. SHAW: Thank you.

10 BY MS. SHAW:

11 Q. Would it surprise you to know that those two
12 courses were only offered in 2016 and not 2018 as you claim?

13 A. Yeah, I mean that would surprise me at the same
14 time if there was an error on the years.

15 Q. So you're acknowledging there could be an error
16 here regarding this course?

17 A. I think in any specific document there could be an
18 error, so, yes.

19 Q. Okay. But this is your CV that outlines what you
20 claim to be your credentials?

21 A. Correct.

22 Q. Okay.

23 MS. SHAW: I have nothing further at this time for
24 Cross-Examination, Your Honor.

25 THE COURT: All right. Anything for follow up,

DR. BAEZ-LOCKARD REDIRECT VOIR DIRE BY MR.FALK

1 Mr. Falk?

2 MR. FALK: Yes, Your Honor.

3 REDIRECT VOIR DIRE

4 BY MR. FALK:

5 Q. Dr. Lockard, if I refer to South Carolina code
6 section 44-48-30, it defines what a sexually violent
7 predator is. And Subsection Paragraph 1B says, That a
8 sexually violent predator suffers from a mental abnormality
9 or personality disorder that makes them likely to engage in
10 acts of sexual violence if not confined in a secure facility
11 for long-term care and treatment.

12 Is that your understanding of the definition?

13 A. Yes, sir.

14 Q. All right. So part of that definition is --
15 identifying and diagnosing whether or not somebody has a
16 mental abnormality or personality disorder, is that fair to
17 say?

18 A. Yes.

19 Q. And of how much of your education and career has
20 provided you training in helping you diagnose mental
21 abnormalities and personality disorders in individuals?

22 A. Just simply in our doctorate and all our schooling
23 as it relates to diagnostic clarification and learning
24 about, again, the DSM. And on a daily basis I do intake
25 assessments as well as diagnostic clarification. So,

DR. BAEZ-LOCKARD REDIRECT VOIR DIRE BY MR.FALK

1 unfortunately, I couldn't tell you exactly how many hours,
2 but it's something that I do on a daily basis.

3 Q. So your focus when you were in Kentucky at the sex
4 offender treatment program was part of your work in
5 identifying individuals with mental abnormalities and
6 personality disorders?

7 A. Yes, that was part of what we had to do.

8 Q. And a lot of your training and practical
9 experience has focused on or dealt with -- we'll say a
10 significant portion of which is dealt with people suffering
11 from paraphilias or sexual disorders; is that accurate?

12 A. Yes.

13 Q. Now, the other half of that definition talks
14 about -- it's basically recidivism; is that correct?

15 A. Yes.

16 Q. Is there a mental abnormality, personality
17 disorder, will they recidivate; is that correct?

18 A. Yes.

19 Q. So your work in Kentucky, your work in Illinois,
20 did that ever address issues regarding calculating risk for
21 recidivism?

22 A. Yes, we did that, indeed.

23 Q. And, in fact, you testified that you were trained
24 on the Static-99; is that correct?

25 A. That is correct.

DR. BAEZ-LOCKARD REDIRECT VOIR DIRE BY MR.FALK

1 Q. And I thought that you had said that a lot of your
2 work in Kentucky with the sex offender treatment program
3 concerned issues regarding recidivism and percentages and --
4 I believe that's somewhat a characterization of what your
5 testimony was, was it not?

6 A. Yes.

7 Q. So SVPs are basically identifying people who have
8 a mental abnormality and whether or not they're going to
9 recidivate; is that accurate?

10 A. Correct.

11 Q. Okay. And much of your work since you've been in
12 private practice has been focused on that; is that correct?

13 A. Yes.

14 Q. And in the Carroll case you obviously were
15 admitted to testify as an expert; is that correct?

16 A. Yes, I was.

17 Q. The whole thing about the -- tell me, what is a
18 practicum?

19 A. Supervised hours where you're engaged in any
20 specific type of work that -- you can do evaluations, you
21 can do treatments, just one specific area where you just
22 gain experience and you're able to do the work under the
23 supervision of a licensed individual.

24 Q. Okay. So when you had your -- with your master's
25 degree as you listed a specialization in forensics, you were

DR. BAEZ-LOCKARD REDIRECT VOIR DIRE BY MR.FALK

1 talking about that there were tracks at the Adler School; is
2 that correct?

3 A. So we have track and we also had the ability to
4 pick our practicums ---

5 THE COURT: Wait a minute. There's something else
6 that's coming through that's kind of -- I couldn't hear what
7 was going on. Could you say that again?

8 THE WITNESS: Yes. So through the Adler School we
9 were -- we had the ability to pick different practicums
10 based on the area of specialty that we wanted to -- whether
11 it was practice on an area that we were interested on, and,
12 like I said, that would include, typically for us it was a
13 year-long practicum and it's a specific amount of hours in
14 that specific area.

15 BY MR. FALK:

16 Q. And so that practicum was all devoted to forensic
17 psychology; is that correct?

18 A. Yes.

19 Q. And could some people be at the Adler School and
20 not have taken practicums that focused on forensic
21 psychology?

22 A. Yes, so you have your general practicums and you
23 have your specializations that have practicums.

24 Q. And part of -- when you were saying your
25 specialization that's the specific courses that you were

DR. BAEZ-LOCKARD REDIRECT VOIR DIRE BY MR.FALK

1 taking that related to forensic psychology; is that correct?

2 A. Yes.

3 Q. And other coursework was available that did not
4 directly relate to forensic psychology; is that correct?

5 A. Yes, specifically you have to be able to do the
6 general coursework, specifically, because if you are seeking
7 licensure you have to have a specific amount of hours as
8 well specific classes to be able to have licensure in
9 different states. So it can't just be forensic only,
10 because that wouldn't allow someone to be able to gain their
11 actual license for that state.

12 Q. Okay.

13 MR. FALK: No further questions.

14 THE COURT: All right.

15 All right. I'm going to find this witness to be
16 an expert in the field of forensic psychology in SVP
17 assessment. But before we proceed, we've been at it a
18 while, let's go ahead and take about a 10 or 15-minute break
19 and we'll come back and proceed, okay?

20 MR. FALK: Thank you, Your Honor.

21 MS. SHAW: Thank you, Your Honor.

22 I do have one thing I just need to add for the
23 record if the Court is so inclined. Just one question for
24 Dr. Baez-Lockard.

25 THE COURT: For?

DR. BAEZ-LOCKARD REDIRECT VOIR DIRE BY MR.FALK

1 MS. SHAW: It's regarding her qualifying or being
2 qualified in the Carroll case, Your Honor.

3 THE COURT: In what case?

4 MS. SHAW: In the Carroll case that we referenced
5 earlier with the transcript.

6 THE COURT: I mean, you've already had your chance
7 at -- I don't know. It usually goes Direct Examination,
8 Cross-Examination, Redirect. I'll go ahead and allow it
9 this one time, but that's it. And then I'll give Mr. Falk
10 an opportunity to respond after that.

11 MS. SHAW: That's fine, Your Honor, it's just one
12 question.

13 THE COURT: All right.

14 RECROSS-EXAMINATION VOIR DIRE

15 BY MS. SHAW:

16 Q. Dr. Baez-Lockard, you, in fact, were not qualified
17 as an expert in forensic in SVP evaluations before
18 Judge Young in the Carroll case, correct?

19 A. I would have to go back to the transcript and tell
20 you specifically.

21 Q. Well, I've got it, and if you would like to refer
22 to your own copy, I will specifically refer to you to Page
23 17, Lines 3 and 4. The Court says, I will find that she is
24 qualified as an expert with no further specification.

25 Do you recall that?

DR. BAEZ-LOCKARD REDIRECT VOIR DIRE BY MR.FALK

1 A. Again, I don't remember, but I can just read it,
2 but I don't I recall on that day, yes.

3 Q. Well, are you reading the transcript?

4 A. Sorry, I was just able to pull it up. Which page
5 again?

6 Q. Page 17, Lines 3 and 4.

7 A. Yes, that's what I said.

8 Q. Okay. Thank you.

9 THE COURT: Again, what does it state?

10 MS. SHAW: The transcript states that the Court
11 found that she -- it says, The Court: I will find that she
12 is qualified as an expert. And then Mr. Bogle, my former
13 colleague says, Thank you, Your Honor. And then Mr. Falk
14 proceeded with Direct. There was no specification as to
15 what she was qualified in.

16 THE COURT: But he found her to be an expert?

17 MS. SHAW: Yes. And Mr. Bogle didn't object.

18 THE COURT: Okay. And what was she tendered as an
19 expert in the field of, in that?

20 MS. SHAW: If Your Honor will give me a moment, I
21 will read. All Mr. Falk -- and this is Page 15, Lines 12
22 through 14, I'll read it verbatim. Mr. Falk: Your Honor,
23 at this time we would ask that Dr. Lockard be permitted to
24 testify as an expert in the field of Forensic Psychology.
25 That's it.

DR. BAEZ-LOCKARD REDIRECT VOIR DIRE BY MR.FALK

1 THE COURT: Okay. And Judge Young said, I find
2 her to be qualified as an expert.

3 MS. SHAW: That is correct.

4 THE COURT: Okay. All right. Thank you.

5 All right. Let's take about a 10- or 15-minute
6 break, we'll be back.

7 MS. SHAW: Thank you, Your Honor.

8 MR. FALK: Thank you, Your Honor.

9 (WHEREUPON, a break was held from 11:10 a.m. until
10 11:30 a.m.)

11 THE COURT: Okay.

12 MS. SHAW: Yes, Your Honor, I'm ready.

13 THE COURT: All right. Let's go ahead.

14 Mr. Falk, Direct Examination.

15 All right. And before we get started, just for
16 everybody's knowledge, I allow Direct Examination,
17 Cross-Examination, and then Redirect as to matters addressed
18 on Cross that were not addressed on Direct. Okay? I don't
19 allow Recross.

20 So, Mr. Falk, in this instance, can do Direct
21 Examination, Ms. Shaw, you can do Cross-Examination. When
22 Mr. Falk does his Redirect, if it's something that he's
23 already brought up on Direct, or if it exceeds the scope of
24 the Cross, then Ms. Shaw raise your objection. Okay?

25 MS. SHAW: Yes, Your Honor.

DR. BAEZ-LOCKARD - DIRECT BY MR. FALK

1 THE COURT: So that's the way we do it. Direct
2 Examination, Cross-Examination, then Redirect on matters
3 addressed on Cross that were not addressed on Direct. Okay?

4 MS. SHAW: I understand, Your Honor. In New
5 Jersey we do a slightly different procedure and I'm
6 relatively new to South Carolina.

7 THE COURT: Well, yeah, and some Judges allow
8 Recross. The Supreme Court has said it's discretionary with
9 the Judge. And I've found that it just kind of keeps going
10 back and forth, back and forth, back and forth if you don't
11 put a limit on it and say this is the way we're going to do
12 it.

13 So anything Mr. Falk wants out, he goes ahead and
14 does in his Direct. And then anything you want, you do on
15 your Cross. And then, only if he didn't address it in his
16 Direct, will he be allowed to Redirect when you come back.

17 MS. SHAW: I understand, Your Honor. Thank you.

18 THE COURT: All right. Dr. Baez-Lockard, you're
19 still under oath. Mr. Falk, Direct Examination.

20 MR. FALK: Yes, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. FALK:

23 Q. Dr. Lockard, can you hear me?

24 THE COURT: Wait a minute she's muted.

25 All right. There you go.

DR. BAEZ-LOCKARD - DIRECT BY MR. FALK

1 THE WITNESS: Yes, I can.

2 BY MR. FALK:

3 Q. Dr. Lockard, you had an opportunity to meet with
4 John O'Neil Johnson?

5 A. That is correct.

6 Q. And the individual on the screen in that one box,
7 that's the same person you spoke with; is that correct?

8 A. Yes, sir.

9 Q. Okay. And I'm looking through your evaluation and
10 it shows that one thing's not clear to me, Mr. Johnson was
11 interviewed on two occasions for approximately two hours.
12 Does that mean that you interviewed him for four hours or
13 one hour two times for two hours?

14 A. Yeah, two hours each, sir.

15 Q. Okay. So you spent a total of four hours sort of
16 in a direct discussion with him, then there was additional
17 three-and-a-half hours of testing; is that correct?

18 A. Yes, psychological testing, yes.

19 Q. Okay. Now, I'm looking at your report and you
20 referred to -- you list some collateral information in that
21 report -- and if you want to follow along with me I'm on
22 Page 2 -- and the information that you looked at was -- and
23 this was information that was presumably was provided by
24 Wellpath or Correct Care, the Integrated Care Plan, that's
25 the ICP; and the Treatment Plan, the TP; the Case Management

DR. BAEZ-LOCKARD - DIRECT BY MR. FALK

1 Treatment Summary, the Psychiatric Referral Summary,
2 Psychiatric Evaluation, Psychiatric Progress Notes, Case
3 Manager Progress Notes, Weekly Group notes, and Behavioral
4 Management Committee Records. So you reviewed those, that's
5 the information that was provided to you from Wellpath; is
6 that correct?

7 A. So these are documents that you, as his attorney,
8 was able to provide to me, but some of them Wellpath
9 provided, too.

10 Q. Okay. Now, is this the type of information that
11 you would normally rely on when doing this type of
12 evaluation?

13 A. Yeah, at times there's additional information to
14 any case that I do get a chance to review. However, some of
15 the information may not be specifically related to the case
16 such as if the individual sent to you, as the attorney,
17 notes or any specific questions and I do not write down as
18 part of my collateral information. However, I do get to
19 review it, but I don't get to write that down, specifically.

20 Q. Okay. And, again, what we're talking about here
21 is whether or not his situation has changed so that he no
22 longer poses a risk if he were released; is that correct?

23 A. Correct.

24 Q. So what we're really talking about is, for
25 whatever reason, after so many years at the sexually violent

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1 treatment program, we're concerned about whether or not it's
2 safe for him to be released; is that correct?

3 A. Yes.

4 Q. And he was admitted to the program, what, in 2008?
5 Is that your notes?

6 A. Yeah, July 17 of 2008.

7 Q. Okay. So he's been in -- so by the time you did
8 this report, he'd been there for about 12 years?

9 A. Yes.

10 Q. Okay. And you also looked at some of the -- one
11 of the other things you looked at was the original
12 commitment documentation. So that would be the original
13 Static-99, SVP report, the information that was generated as
14 part of the initial commitment proceedings; is that correct?

15 A. Yes.

16 Q. And you also looked at some of the annual
17 evaluations that were performed by the South Carolina
18 Department of Mental Health; is that correct?

19 A. Yes. I looked at anywhere between the year 2016
20 for Mr. Johnson. I have 2016, 2017 documents, 2018, 2019,
21 and 2020 documents.

22 Q. Okay. So all of those -- that information all
23 helped you reach your conclusion based on a review of all
24 that past information, as well; is that correct?

25 A. Yes.

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1 MS. SHAW: Your Honor, just -- I'm sorry, Mr. Falk
2 to interrupt you. I do have an objection.

3 Mr. Falk, as I understand right now, it's
4 relatively innocuous, because we're just going through
5 documents that Dr. Baez-Lockard reviewed. There's a
6 substantial amount of leading. I would just ask that
7 Mr. Falk refrain from that once we get into the actual
8 testimony.

9 THE COURT: All right. Sustained. I agree.
10 Go ahead, Mr. Falk.

11 MR. FALK: All right. I would also agree I was
12 leading.

13 BY MR. FALK:

14 Q. All right. Let's go into the -- in your report --
15 and now I've moved on to Page 4, there's an indication that
16 I highlighted in that section that, quote, he was a slow
17 learner?

18 A. Yes. That is what -- how Mr. Johnson described
19 himself. As part of my evaluation I gather that type of
20 information and I would ask him specific questions related
21 to his educational history. We were talking about his
22 school performance and how he did overall in school. He
23 said that some of his struggles were related to the fact
24 that he was a slow learner.

25 Q. All right. How does the fact that he sort of

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1 self-described as a slow learner, does that have any impact
2 or effect on your opinion in this case?

3 A. I think it effects to an extent, especially if
4 he's having a difficult time understanding the information
5 that is being provided to him during the treatment program
6 and whether or not that has been taken into consideration
7 during treatment.

8 Q. I saw another note about a special needs track, is
9 that correct?

10 A. Yes.

11 Q. And what was your understanding of that?

12 A. I believe that he had requested at one point or
13 another to be on the special or developmental delay group
14 because he was having a difficult time.

15 Q. And is his -- the fact that he had to go through
16 this sort of special needs track, did that have any impact
17 on your opinion in this case?

18 A. It does to an extent again, because if he's
19 struggling or having a difficult time providing the
20 assignments to the case manager or if it shows that he's not
21 reflecting the information or having to resubmit the
22 information on several occasions and his difficulties with
23 learning have not been taken into consideration, he could be
24 seen as someone that may not be putting in good effort or is
25 not trying to accept or not listening to feedback, that

1 could be related to his academic difficulties.

2 Q. Now, you spent four hours really -- could you
3 please describe -- at the beginning I asked you about these
4 two two-hour sessions, could you tell me what those sessions
5 were like. What transpired during those sessions?

6 A. Yes. So because of Covid we had to do everything
7 through Zoom, it's what we utilized through Wellpath. And
8 so that's what means that is when I'm doing an intake
9 assessment with Mr. Johnson after I had a chance to review
10 the documentation, and I gathered background information,
11 anywhere between social, legal history, mental health
12 history, substance abuse history.

13 We also get a chance to look at his last
14 evaluation and what that evaluation -- what the findings
15 were. And if there was any discrepancy, any issue,
16 especially when someone's been in a program for 12 years,
17 that kind of additional information does has come up
18 throughout the years that would tell about that. The
19 individual had provided different information about one
20 evaluation versus the other. So I like clarify a lot of the
21 information if there's any discrepancy with the individual.

22 Q. Is this done through question and answer or how do
23 you get the information from him?

24 A. Yes. I would ask the individual specific
25 questions and get the answer and I would ask for

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1 clarification if there's anything else we need to clarify in
2 regards to that specific topic.

3 Q. So these two sessions that lasted approximately
4 two hours apiece, that was mostly a question and answer
5 format. Is that what I'm hearing you say?

6 A. Yes.

7 Q. Was there anything -- was his identification or
8 self-identification as being a slow learner, did that at all
9 hamper or how did that effect his ability to communicate
10 with you for those four hours?

11 A. So he would, at times, would have a difficult time
12 with following -- what I was asking him specifically. So he
13 would have a difficult time, like, focusing or concentrating
14 or following my train of thought. So I would have to repeat
15 a lot of the questions or clarify what I meant for a
16 specific question.

17 Q. Do you believe he ultimately answered the
18 questions?

19 A. Yes, he did.

20 Q. I'm looking at Page 4 of your report and he
21 described as saying, in that last sentence, you indicated
22 that he reported that he was never terminated from a
23 position of employment and he would work side jobs during
24 times of unemployment. Do you recall that ---

25 A. Yes.

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1 Q. --- in your report?

2 A. Yes.

3 Q. And does that reflect sort of a stable work
4 history ---

5 A. Yes.

6 Q. --- that he described to you?

7 A. Yes.

8 Q. What does a stable work history, somebody having a
9 stable work history, does that have any impact on your
10 opinion in this case?

11 A. Yes. We do look into it in regards some other
12 factors associated with an individual if they're able to
13 have a stable employment, stable relationships, if they have
14 gotten into trouble at work, different factors that would
15 impact his decision making, impulsivity, just overall
16 different factors related to the individual.

17 Q. I'm going to get to this later where we talk about
18 dynamic risk factors. Is the ability of employment
19 something to consider when you're looking at dynamic risk
20 factors?

21 A. Yes, having the ability, yes.

22 Q. Okay. In your field you talk about something that
23 are protective factors; is that right?

24 A. Yes, we do.

25 Q. And that's sort of a -- that's sort of a positive;

1 is that correct?

2 A. Yes, that's most definitely a positive, especially
3 due to concerns with, like, recidivism, whether or not that
4 individual has a different type of support system, just
5 additional factors that would reduce the likelihood of that
6 individual to reoffend.

7 Q. All right. I'm moving on to his mental health
8 history and I'm on Page 5. And did you find in looking
9 through the -- sort of the historical information in this
10 case, the prior mental health assessments, did you find an
11 indication of a diagnosis of bipolar disorder?

12 A. So in the documents he reported that he was
13 diagnosed in 2007 for his bipolar disorder. However, there
14 was -- I did not find any specific documentation to state
15 that he received the diagnosis. He did provide the
16 different medications that has been prescribed that are
17 related to mood stabilizers. But whether or not he received
18 the official diagnosis by a qualified clinician, I do not
19 have those documents.

20 Q. What is your understanding of bipolar disorder?

21 A. Yes. With bipolar disorder we have an individual
22 that has a variety of a mood, like a stable mood that is not
23 consistent, like, throughout the day, depends on what type
24 other disorders he may or what other issues he may be
25 dealing with.

1 For example, an individual may be what we call
2 "hypomaniac." So some of those specific behaviors are like
3 if someone let's say stays up at night or something that is
4 not your typical behavior. They become manic, which is
5 another word that clinicians describe as bipolar disorder
6 to. There are different types of bipolar disorder. And
7 that specifically those behaviors tend to last at least one
8 week or so, at times those can be severe. There are times
9 where the individual is down, the individual is up, where
10 there's like just irrational behaviors overall.

11 Q. If somebody were suffering from bipolar disorder,
12 would you expect to see any observations by treatment
13 providers, by people planning his daily treatment, of
14 manifestations of bipolar disorder?

15 A. Yes, specifically is he's attending group where
16 he's able to be observed by the clinicians where they may
17 find him at times that he's struggling with -- he may seem
18 more depressed than, say, other days. So they may be able
19 to see the shift in mood during treatment.

20 Q. And did you see indications from any of his
21 clinicians of him acting out in a manic state?

22 A. I don't recall seeing any specific documentation.
23 I would have to go back if you would like and review
24 specifically during what time during the program if he
25 displayed that. I know that there was documentation in

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1 regards to depression and how he tends to be withdrawn at
2 times during group. I do recall seeing those specific
3 notes.

4 Q. Do you recall seeing any behavioral -- what are
5 they called behavioral management -- BMC -- what are they --
6 excuse me. Behavioral Management Committee Report, did you
7 see any -- what's your understanding of the Behavioral
8 Management Committee Reports? What is the purpose of those?

9 A. Yes. These are just specifically referred by
10 official studying the individual for your writeups. So
11 these may be referred to that specific committee, the
12 Behavioral Management Committee. So if there's been any
13 specific incidents, they will get referred and he can either
14 be dismissed or the individual can be found guilty of that
15 specific thing that they're being accused of doing.

16 So as I recall back in March of 2020, there was
17 one referral for providing contraband to a peer.

18 Q. And that was the only report that you recall
19 seeing?

20 A. That's correct.

21 Q. Okay. Also you reported that while he was in sex
22 offender treatment he received Alcoholics Anonymous
23 Treatment and Anger Management Treatment. Do you recall
24 seeing that?

25 A. Yes.

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1 Q. You -- based on your observations, do you think
2 that he's benefited from that treatment?

3 A. Yes. I mean, especially based on what he
4 indicated in regards to the amount of substances that he was
5 using prior to being in the treatment program and not having
6 engaged in any type of substance use while in the program.

7 Q. And how about the anger management?

8 A. Yes, as well. And, again, we were able to look
9 back into his behavior referrals if there's been any
10 specific incidents or referrals for any type of anger type
11 of behavior displayed while in the program he would have
12 gotten an infraction or a behavioral management referral.

13 Q. Does an ability to, for a lack of a better -- not
14 act out in an anger response, or is an ability to not, I
15 guess, not lash out and be angry. Does that relate to any
16 of the dynamic risk factors?

17 A. Ah ---

18 Q. Anger control -- anger control, that's what I
19 should have said. Does anger control relate to any of the
20 dynamic risk factors?

21 A. Yes, it would. It would refer to specifically
22 to -- we could look into impulsiveness for that individual.
23 We can also look into whether or not that individual has
24 been able to have different -- let's say different poor
25 coping skills that will make that individual act in an

1 aggressive -- in an aggressive manner, as well.

2 So it can impact several dynamic risk factors.

3 Again, grievance, persistive, resistance to rules and
4 supervision. It can touch into different factors, dynamic
5 risk factors.

6 Q. And again, I'm not sure if I asked this question
7 exactly this way, but in your review of reports from his
8 clinicians, is it your opinion that he benefited from anger
9 management treatment?

10 A. Yes.

11 Q. There's a paragraph on your report which talks
12 about recent sexual functioning?

13 A. Yes.

14 Q. What did you find significant about his recent
15 sexual functioning that relates to your opinion in this
16 case?

17 A. So when I ask the individual in regards to whether
18 or not they engage in any type of sexual behaviors such as
19 masturbation, he was forthcoming in regards to engaging in
20 once or twice per month. And he tends to fantasize about
21 women as well as previous relationships. I always asked him
22 if any of these fantasies are of deviant in nature, meaning
23 if they were engaging in any type force or types of acts.
24 Even if you are with two consenting adults, they can still
25 engage in some type of what we call like deviant-type of

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1 behavior. And if it involves anything like past victims or
2 anything like that in regards to the violence.

3 And Mr. Johnson reported, again, about women,
4 previous relationships, and none of those sexual fantasies
5 are in fact violent or utilizing any type of force or
6 control over them.

7 Q. And would you -- if there were problems with
8 pornographic contraband, would you expect to see an
9 indication of that in behavioral management committee note?

10 A. Yes, if the individual ahs any type of
11 pornographic material then he would have gotten a referral
12 for the behavioral management, yes.

13 Q. How about inappropriate -- I guess the best way --
14 inappropriate masturbation habits, would you expect to see
15 that in a behavioral management referral?

16 A. Yeah, we have seen that in other cases where the
17 individual is engaging in masturbation while in the presence
18 of some of the officers or doing it in a way that will make
19 them have a referral.

20 MS. SHAW: Your Honor, I'm just going to renew my
21 objection to the leading. There's been a fair amount of it
22 going on. So I am going go request that Mr. Falk restrict
23 his questioning.

24 THE COURT: I don't think he was leading too much
25 there. I'll overrule that. But I agree with you, he can't

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1 lead, but I think he didn't indicate that there -- indicate
2 in his question the direct answer to give.

3 So go ahead, Mr. Falk.

4 BY MR. FALK:

5 Q. Did you find any -- in your review of the
6 behavioral management committee notes, did you find any
7 indication of inappropriate sexual functioning?

8 A. No, I did not.

9 Q. Another one of your headings is Interpersonal
10 Relationships.

11 A. Yes.

12 Q. What did you find specific about his interpersonal
13 relationships that had an impact on your opinion in this
14 case?

15 A. Yeah, one -- especially when we're looking at
16 dynamic risk factors we look in regards to relationships
17 with adults. And Mr. Johnson did mention that he -- he had
18 some friends, although that amount of friends is limited, he
19 did report a very close relationship with his son-in-law as
20 well as his mother-in-law. And that he communicates weekly
21 with his sister and that shows again his ability when it
22 comes to relationships and healthy and positive
23 relationships.

24 Q. I think you used the term, healthy and positive
25 relationships. Does that have an impact on his dynamic risk

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1 factors?

2 A. It has on dynamic risk factors as well as
3 protective factors. The fact that he had these reports of
4 his family. He communicates with them often. And it shows
5 that those relationships, again, are healthy and supportive
6 of him.

7 Q. What did you find regarding his participation in
8 treatment that had an impact on your opinion in this case?

9 A. I'm sorry, can you repeat that again?

10 Q. Did you find -- you looked at treatment notes and
11 you looked at responses from the clinician's progress in
12 doing assignments. Did you find any -- you reviewed that
13 information; is that correct?

14 A. I did. I reviewed that information, yes.

15 Q. All right. What did you find in that information
16 about his participation and treatment that effected your --
17 that influenced your opinion in this case?

18 A. Yes. So when looking at the specific treatment
19 for him, again, we look into like the behavioral management
20 and whether or not his participation has been consistent
21 with the review period and whether or not he turns in the
22 notes. If there's been any issues within the group. So
23 those are the things that I would look into in regards to
24 his treatment and his progress.

25 Q. And you said that you would look into that. Based

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1 on your review of that, does his participation in the
2 program does that effect -- does that have an influence on
3 your opinion? I mean, how did it influence your opinion in
4 this case?

5 A. It impacts in the way with how stable, consistent
6 he has been with treatment and in regards to whether or not
7 he's engaging in any type of behaviors that could be
8 indicative of an individual that, if released, would engage
9 in similar behaviors.

10 So if -- in addition to that, it's also related to
11 how he's doing in treatment and any specific issues within
12 treatment that, again, that could pose a concern in regards
13 to him being released.

14 Q. Did you find anything that posed a concern for him
15 being released?

16 A. Not for him being released at this time, no.

17 Q. Thank you. And let me talk about -- you did some
18 testing in this case; is that correct?

19 A. Yes, that is correct.

20 Q. You did -- and I might get into this a little bit
21 later -- just describe the process for administering the
22 MMPI. Did you provide an MMPI in this case?

23 A. Yes, he was administered an MMPI-2-RF, which is a
24 the instruction form.

25 Q. Okay. Just describe how long the process takes,

1 what's involved in it?

2 A. So first we went through Zoom, or teleconference,
3 it had to be read to Mr. Johnson, which is one of the ways
4 to administer the MMPI specifically. The individual gets to
5 answer on their own individually. And it is a set of True
6 or False questions where it looks into how an individual
7 is -- their way of thinking in regards to their overall
8 psychopathology, typical behaviors, just to be able to
9 clarify and provide additional information regarding that
10 individual's clinical or personality disorders.

11 Q. Can you describe his level of cooperation with his
12 MMPI?

13 A. Yes. He was cooperative in regards to sitting and
14 taking the examination and answering all of the questions.
15 When it comes to do the test, it was a completed profile, so
16 he responded to all of the items.

17 Q. Did you find anything in the results from the MMPI
18 that had an impact on your opinion in this case?

19 A. So, yeah, I looked into, again, his specific
20 scales as well as the overall profile in regards to
21 Mr. Johnson and what's going on with him. And there was
22 some concerns with issues with his mood, like depression,
23 dealing with some of that introversion, as well. Again,
24 talking about some of the behaviors based on history and the
25 past like antisocial behavior, as well as any kind of

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1 questions how he's functioning in that particular time that
2 we administered the MMPI to.

3 Q. But you scored the MMPI; is that correct?

4 A. Yes, we score that, yes.

5 Q. And, the scores does that -- how does the
6 scores -- what do the scores mean? What do the scores
7 measure?

8 A. Yes. So we look into what an individual -- once
9 we score them in the MMPI-2, the raw score is then converted
10 into what we call a T Score, and depending on what the
11 individual scores on the MMPI, it let's us know if these are
12 elevated scales or not, and then we can go more in depth and
13 look into what specific skill that is and what's going on
14 with the individual. So, which also helps us generate or
15 have different opinions based on how that individual is
16 functioning at the time of the individual taking the test.

17 Q. How did his specific scoring, T. scores, whatever,
18 how did those results impact your opinion in this case?

19 A. Well, it looks into like the validity of the
20 individual. How forthcoming as well as how honest the
21 individual is. As well as if there's any additional
22 concerns like anger, impulse control any concerns that could
23 lead that Mr. Johnson has had in the past, and that it's not
24 just based on static risk factors.

25 So meaning that the individual personality and how

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1 they're functioning at this given time versus information
2 that was gathered just from his legal records.

3 Q. Is there anything on the MMPI which would be
4 helpful in evaluating his candor during the interview
5 process?

6 A. Yes. So there's as I mentioned there's specific
7 scales that deal with the validity of the individual of how
8 valid the profile is. How the individual -- if they're
9 being consistent in responding. If they're trying to make
10 themselves in a more positive or less favorable way. So the
11 test looks into that, and then based on that information,
12 and it also let's you how that individual is responding to
13 these questions and how that may also create more of a --
14 whether it's in congruent with his treatment progress, or
15 how he's functioning in the sex offender program, as well.

16 Q. Based on your experience with the MMPI, did you
17 think he was being candid throughout and based on his
18 results of the MMPI, did you think he was being candid
19 through the entire interview process?

20 A. Yes, he was being open and cooperative, yes.

21 Q. Okay. You talked about some -- I'm just going to
22 read a sentence from your report.

23 Well, let's look at Page 8 of your report under
24 the Clinical Interview, and the statement -- you made a
25 statement, Mr. Johnson was questioned repeatedly by this

1 examiner, specifically with respects to attitudes that might
2 indicate maybe less of these dynamic risk factors.

3 Do you recall that?

4 A. Yes.

5 Q. What do you mean by repeatedly questioned?

6 A. So what that means when we start the interview and
7 I asked Mr. Johnson some questions, if there's any
8 discrepancies in regards to perhaps any information that he
9 has provided throughout the interview, I go back to that
10 specific issue. If there's any -- like, say the individual
11 makes any comments in regards to any kind of like sexual
12 attitudes halfway through the interview, and then later on
13 he provides a different information then I'll clarify again,
14 and then I'll ask him again. So pretty much the entire
15 interview addresses concerns with his sexual functioning as
16 well.

17 Q. And the topics I think that you were focusing on
18 were victim blaming, sexual entitlement, rape attitudes, and
19 attitudes tolerant of child molestation; is that accurate?

20 A. That's correct.

21 Q. Why were you focusing on those topics?

22 A. So I look to specifically as to his attitudes
23 overall, as well as his thinking, we can see if some of the
24 skills that he as learned, again, as it relates to gaining
25 some type of insight by understanding his behavior. So

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1 these are looking into behaviors that could be maintaining
2 any kind of attitude or thinking that if -- that could again
3 increase the likelihood that he could reoffend.

4 Q. What specifically does victim blaming mean?

5 A. Meaning that the individual is really not taking
6 responsibility for their actions in that they will blame the
7 victim for what that individual did to them.

8 Q. Blaming it on whether or not she was provocatively
9 dressed, is that what we're talking about?

10 A. Yes. If the individual wanted to engage in any
11 kind of sexual relationship with the individual. So pretty
12 much the person just does take ownership responsibility for
13 their behavior and they'll blame it on somebody else.

14 Q. And sexual entitlement, what does that mean?

15 A. Just means where the individual, feels like one
16 way or the other, that they are entitled to engage in any
17 kind of sexual behavior with the victim, with that specific
18 individual.

19 Q. Okay. So you repeatedly questioned him about
20 victim blaming, sexual entitlement, rape attitudes, and
21 attitudes tolerant of child molestation. Did you find
22 anything in his responses to those -- that questioning which
23 had an impact on your opinion in this case?

24 A. I did not have anything negative -- any negative
25 findings in regards to that.

1 Q. Is that -- you found nothing -- you found no
2 negative finding; is that correct?

3 A. Correct.

4 Q. The last sentence of that first paragraph says,
5 Mr. Johnson was able to identify what lead to his sexual
6 offending behaviors. Can you explain that?

7 A. Yes. So part of -- part of the questioning to
8 Mr. Johnson is regards to looking back to what could have
9 lead to those behaviors understanding any kind of childhood
10 history, any kind of trauma. And, again, not to as a way to
11 excuse the behavior, but it's a way to understand the
12 behavior and areas that he can work on or should have been
13 working on.

14 A lot of the times some of the individuals
15 struggle with let's say self esteem or coping skills or
16 things of that sort. And these are things that could lead
17 an individual to engage in any type of sex offense type of
18 behavior.

19 Q. What specifically was he able to identify as it
20 relates to his ability -- what did he identify as something
21 that led to his sexual offending?

22 A. Yes. Let me look at my notes specifically at what
23 he stated.

24 One of the things specifically that Mr. Johnson
25 discussed was his difficulties with self esteem. He stated

1 that his low self esteem played a role into his sexual
2 offending behavior. Part of the things that he also learned
3 was in regards to substance use and being surrounded by
4 negative influences.

5 So when an individual provides that response and
6 then that's what I'll continue to question in regards to
7 what type of relationships do they have in the program, who
8 do they tend to associate, if any of these relationships are
9 positive or negative. And he was also able to identify in
10 regards to the victim, having that level of empathy for the
11 individual. He was able to also identify the impact that
12 had on the victim. That is a question that I specifically
13 asked him. And what is his understanding of how is sexual
14 offending impacted these victims.

15 And he was able to provide a response in regards
16 to how it could effect an individual and he specifically
17 stated that some of the ways that it could effect the victim
18 is related to issues with trust, ability to form healthy
19 relationships, ability to function on a daily basis without
20 trying to recall the incident. These are some of his
21 responses in regards to the answers that he had.

22 Q. Did you get a sense about -- is it your opinion
23 that these were positive responses that he was giving you?

24 A. Yes.

25 Q. Did you get a sense about what impact his time at

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1 the sexually violent treatment program had on those
2 responses?

3 A. Yes. And he also stated that as well. In regards
4 to some of the ways that he has benefited in the program.
5 And, again, some of those issues related to self esteem, him
6 being able to excuse any of his sexually offending
7 behaviors, being able to identify problems and measuring
8 those beliefs.

9 So he was able to reflect and provide specific
10 examples as to the things that he has learned in the
11 program.

12 Q. Victim empathy is something that he would have
13 learned about. What does victim empathy mean?

14 A. So victim empathy is really understanding the --
15 pretty much can the person understand how that individual
16 may have felt and the impact that it has on that victim, the
17 behavior that he engaged in. So it's really relating or
18 understanding how that victim could have felt at the time
19 and whether or not that individual feels remorse or feels
20 sorry for their behavior.

21 Q. If somebody -- you're familiar with the diagnosis
22 of antisocial personality disorder, are you not?

23 A. Yes, I am.

24 Q. How does victim empathy relate to the diagnostic
25 criteria for antisocial personality disorder?

1 A. Yes. So it's one of the -- one of the criteria,
2 although one that is a requirement, but it's one of the
3 possible criterias for someone being diagnosed with
4 antisocial personality disorder is that lack of remorse or
5 is the individual rationalizing how to hurt someone or
6 mistreating someone.

7 Q. We've already talked a lot about the MMPI, now I
8 want to talk about Hare. Can you explain what the Hare
9 Psychopathy Checklist provides for this test?

10 A. Yes. So we look over the PCLR, and that
11 specific -- which base I may also say, one of the intake
12 assessments that I do with all of the individuals, it goes
13 back to the PCLR, the booklet where it asks you specific
14 questions in regards to how that individual is functioning
15 different, again, their sexual offending. It's just a
16 pretty big book in regards to that individual.

17 So the PCLR, this is, again, looking into how the
18 individual is -- may or may not show or reflect being
19 identified as someone that has the diagnosis of antisocial
20 personality disorders. So the PCLR organizes this into,
21 like, four factors. When it looks into like interpersonal,
22 affective, lifestyle, and antisocial. And if the individual
23 has a score that is it tends to be whether or not it's a
24 high score or whether or not they meet the criteria for an
25 individual with psychopathy.

DR. BAEZ-LOCKARD - DIRECT BY MR. FALK

1 Q. So -- and what does psychopathy mean?

2 A. So psychopathy --

3 THE COURT: Wait a minute, you're breaking up, I'm
4 sorry. I'm sorry, you're breaking up, your audio is
5 breaking up. Say that again.

6 MR. FALK: Let me ask the question again, Your
7 Honor.

8 BY MR. FALK:

9 Q. What does psychopathy mean?

10 A. Like the psychopathic traits of someone. So these
11 are specific type of behaviors, beliefs, that the individual
12 may hold that could make that individual meet the criteria
13 of the diagnosis for antisocial personality disorder.

14 Q. So does it relate -- so is the Hare in your field
15 of forensic psychology, is the Hare used as a device to
16 measure people's antisocial personality traits?

17 A. So what it does is that it allows you to the
18 ability to score that individual and conclude that whether
19 or not that individual will meet the criteria or the
20 threshold of someone with psychopathy and antisocial
21 personality disorder.

22 Q. Okay. Can you then explain some of his scores.
23 If an overall high score was on Factor 2, social -- and then
24 your sentence goes on, Social deviants, T-score equals 49.

25 What does that mean?

DR. BAEZ-LOCKARD - DIRECT BY MR. FALK

1 A. Let me go back to it.

2 Q. That's on Page 10.

3 A. Yes. So I just reported, as I mentioned prior to,
4 there's different factors within the PCLR. So in that way
5 I'm able to show what that specific T score is. So for
6 example, like, for Mr. Johnson, when he received a T score
7 of 23, or a general total score of 23, and then a T score of
8 51, and what that means in regards to whether or not it's
9 average, whether or not it's high for that individual, or
10 if, again, if they meet the criteria or the threshold for
11 someone with psychopathy.

12 Q. So how does it work if his -- let's say his score
13 was 75, what would that mean?

14 A. So there is a specific chart that we go by and
15 then it would allow us to see where that individual is
16 within that score. And if they're meeting the threshold the
17 numbers specific that you use to be able to say if that
18 individual met the cutoff or not.

19 Q. Okay. Let's talk about the cutoff. What does the
20 cutoff mean?

21 A. So, again, the cutoff just means whether or not
22 that individual will meet the criteria of psychopathy or
23 antisocial personality.

24 Q. What is the specific cutoff?

25 A. The specific cutoff for the PCLR?

DR. BAEZ-LOCKARD - DIRECT BY MR. FALK

1 Q. For measuring?

2 A. I'm sorry, you're cutting in and out on me.

3 Q. You're using the term cutoff, so I assume that
4 that means that if you score over a particular -- over the
5 cutoff value it means something and if you score under the
6 cutoff value that means something; is that accurate?

7 Cutoff -- I mean, it means that if you get to
8 the -- for the general population is there a cutoff number?

9 Did you hear me?

10 THE COURT: Have we lost her?

11 MR. FALK: Dr. Lockard, did you hear my question?

12 THE WITNESS: Are you there?

13 THE COURT: Yes. Can you see and hear us?

14 THE WITNESS: Yes. It reloads.

15 THE COURT: Okay. All right.

16 Mr. Falk, ask your questions again.

17 BY MR. FALK:

18 Q. Is there a cutoff value that's significant in
19 scoring somebody on a PCLR?

20 A. Yes.

21 Q. What is that cutoff number?

22 A. So the cutoff number for the PCLR to cut off
23 begins at number 30 for the individual.

24 Q. Okay. So if you're higher than the cutoff number,
25 what does that mean?

DR. BAEZ-LOCKARD - DIRECT BY MR. FALK

1 A. It would mean that the individual will meet the
2 criteria or the cutoff score for psychopathy.

3 Q. So the higher the number the more psychopathic
4 traits?

5 A. Yes.

6 Q. Okay. All right. So -- and then how does a 23
7 compare with the general population, a cutoff number of 23,
8 how does that compare with the general population?

9 A. Yes. So that would mean that he was, again, under
10 the cutoff and with the T score of 51. So that would mean
11 that he does not meet the cutoff for the criteria for that
12 and that he falls into the average range when compared to
13 other individuals.

14 Q. And then you said his highest score was on Factor
15 2, social deviants with a T score of 49, what does that
16 sentence mean?

17 A. So, again, it's a mixture of -- there's different
18 factors. As specifically to the PCLR, one of the factors
19 that that they like for us to look at more specifically is
20 the scores as it relates to, like, antisocial, which is the
21 Factor 4. Specifically, it's the individual that could
22 engage in more aggressive type of behaviors or manipulation,
23 so I like to look specifically as to whether some of those
24 scores for him.

25 So for Mr. Johnson, when he scores two on like the

1 social deviant scores, so we're looking into, again, things
2 such as like interpersonal relationships, things that are
3 like grandiose or self worth or things of that sort. And
4 that's where he would score, again, under that final score.

5 Q. We're going talk about the Static-99 in a moment,
6 and it's my understanding that static factors are something
7 that will not change; is that correct?

8 A. That is correct.

9 Q. Other than age, static factors don't change; is
10 that correct?

11 A. That's correct.

12 Q. Is there any reason to think that scores on the
13 Hare Psychopathy Test would change over a course of time?

14 A. Is there -- I'm sorry, what was your question?

15 Q. Hypothetically, if he was given this test 12 years
16 ago and then given the test in November of '20, is it
17 possible that his scores would change?

18 A. Not likely, but it's possible that they could, but
19 it's not likely. This his how -- I mean, it could depend in
20 the sense of the information that the individual may
21 provide, however it's not likely, no.

22 Q. Is treatment -- does treatment effect your scoring
23 on this test?

24 A. Treatment could impact it in one way or another.
25 Again, if the individual has learned specific things within

1 themselves like self worth, if they have learned to
2 recognize some of the struggles or the difficulties when it
3 comes to taking responsibility, impulsive irresponsibility,
4 as well.

5 So these are some of the factors and what the PCLR
6 takes when the individual receives treatment and they've
7 been able to gain better understanding and insight with
8 regards to that, then it could impact that score.

9 Q. Do you view his score on the PCLR as positive?

10 A. I do.

11 Q. And does his score on the PCLR, did that have an
12 impact on your ultimate decision to change that?

13 A. It does because, specifically for him, one of the
14 diagnosis reflected some personality traits. So this allows
15 an individual with the MMP2 looking into whether or not
16 there's some concerns and some issues in regards to
17 Mr. Johnson's psychopathy type traits.

18 Q. Do you have an opinion about whether or not his
19 treatment effected his score on the PCLR?

20 A. I'm sorry, can you say that again?

21 Q. Do you have an opinion whether or not his
22 treatment -- his specific treatment had an impact on his
23 PCLR score?

24 A. I don't have any specific example. Are you asking
25 me for specific examples?

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1 Q. No. No. My question was, Do you have an opinion
2 whether or not he received at the sexually violent predator
3 treatment program had an impact on his PCLR score?

4 A. I do. I think that it would have an impact,
5 again, as I mentioned in regards to his ability to learn
6 more about himself as well as a better understanding and
7 insight regards to his victim, interpersonal issues,
8 effective issues things of that sort.

9 Q. Okay. I'm going to move on the Static-99.

10 THE COURT: Excuse me. Before you move into that,
11 and I don't want to limit you, Mr. Falk, but how much --
12 it's 12:30 now, do we want to go ahead and break for lunch?

13 MR. FALK: Well, then, you know, we have one this
14 afternoon.

15 THE COURT: Well -- and I don't know that we're
16 going to get to the one this afternoon. We're still on
17 Direct Examination of the first witness.

18 MR. FALK: Whatever the Court wants to do.

19 THE COURT: I mean, I don't mind going on now a
20 little bit further. I just did not know when's an
21 appropriate time to break. It's 12:30. If you're talking
22 about ---

23 MR. FALK: Can we make it 1:00?

24 THE COURT: Okay. All right. Go ahead. Continue
25 then. That will be good.

DR. BAEZ-LOCKARD - DIRECT BY MR. FALK

1 BY MR. FALK:

2 Q. The Static 99 -- can you hear me?

3 A. Yes, I can.

4 Q. Okay. That shows the static risk factors; is that
5 accurate?

6 A. Yes.

7 Q. Okay. Other than his age, with his Static-99
8 going into the program, would you expect his Static-99 going
9 into the program to be the same as it is today?

10 A. Yes, because it's static, yes. So these are
11 things that do not change over time.

12 Q. Okay. Now, the one thing I want to ask you about
13 is, there are -- the scoring both for the Static-99 has some
14 recidivism percentiles; is that correct -- associated with
15 particular scores?

16 A. That is correct.

17 Q. Okay. When you look at the recidivism percentiles
18 is the fact that is the -- you put somebody who has
19 completed sexually violent predator treatment program in the
20 same group as somebody who has not completed that program?

21 A. We have -- when we're looking into the Static 99,
22 we have routine samples, is that what you're referring to
23 versus ---

24 Q. Well, your question is -- your response is that
25 there's a 25 percent range that he's likely to reoffend in

1 five years.

2 A. Yes.

3 Q. Okay. Now, you're making that comparison based --
4 comparison based to a look at the general population; is
5 that correct?

6 A. So with routine samples, yes.

7 Q. Okay. Is everybody in the routine sample, have
8 they -- have they participated in sexually violent predator
9 treatment programs?

10 A. Based on what the developers have stated, they
11 have -- some of them have engaged in treatment. I believe
12 this is going back to Canada. But, yeah, in regards to the
13 offenders and if they receive any kind of treatment, yes.

14 Q. Are you comparing it to a pool of people who have
15 received treatment or to a pool of people who have committed
16 a sexually violent offense?

17 A. A sexually violent what, I'm sorry?

18 Q. You're making a comparison between his score and a
19 population of people; is that correct?

20 A. Yes.

21 Q. As compared to this population of people?

22 A. Yes. So there's different samples, yes.

23 Q. Okay. The population of people who you're
24 comparing him to, are those people who have committed
25 sexually violent crimes or people who have completed

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1 sexually violent predator treatment?

2 A. So these are individuals that have committed a
3 sexually violent crime.

4 Q. Is there any reason to think whether somebody who
5 has been through a treatment program, his -- his actual
6 likelihood to recidivate would be lower than the
7 20.5 percent?

8 A. If someone has completed treatment?

9 Q. Yes.

10 A. I'm sorry, say that again.

11 MS. SHAW: Your Honor, I'm going to object to this
12 question. This is asking Dr. Baez-Lockard to speculate
13 about whether someone who has completed sex offender
14 treatment versus someone who hasn't completed sex offender
15 treatment actually has a lower likelihood of recidivism, but
16 that's not what the static assesses. The static assesses
17 something very different.

18 So, A, I don't feel that this is an accurate
19 representation of what the static actually tests for, nor is
20 it an appropriate line of questioning for this witness. She
21 can't say is his actual likelihood of recidivism is lower or
22 high than what her assessment on the static reflects. She
23 can't say it.

24 THE COURT: Mr. Falk.

25 MR. FALK: Your Honor. I can maybe try and

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1 establish a better a foundation for my question.

2 THE COURT: All right. If you can. I mean, like
3 I say, you can't ask her for anything that exceeds the scope
4 of her qualifications as an expert. Okay?

5 MR. FALK: Right.

6 THE COURT: All right. Go ahead.

7 BY MR. FALK:

8 Q. Is there any reason to believe -- as an expert, do
9 you have an opinion about whether somebody who completes sex
10 offender treatment will be less likely to recidivate than
11 somebody who does not complete the sex offender treatment?

12 MS. SHAW: Objection again, Your Honor. Leading.

13 THE COURT: Okay.

14 MS. SHAW: He's giving her the answer.

15 THE COURT: No, I don't think so. Go ahead, I'll
16 let her answer that. Go ahead.

17 THE WITNESS: So the factors with the Static-99,
18 so it looks the sex offender whether to or not be released
19 into community, and whether or not they have reoffended and
20 those who have not.

21 So they're looking into, like, the state of
22 recidivism risk of that individual and being able to state
23 the different risk levels and whether or not that individual
24 if they need treatment, whether or not that individual is,
25 again, has a risk of engaging that behavior of reoffending.

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1 BY MR. FALK:

2 Q. Well, let me ask it this say: You've had some
3 familiarity with sex offender treatment programs; is that
4 correct?

5 A. Yes.

6 Q. Is -- what is -- why do people get treatment?
7 What is the purpose of the treatment?

8 A. So the purpose of the treatment is to be able to
9 assist the individual into recognizing their sexual
10 offending behavior. To be able to provide treatment as it
11 relates to empathy factors that impacted their behavior. To
12 be able to understand all of the information as it relates
13 to their case and things that they still need to be able to
14 work on. And whether or not that individual is at risk
15 unless they're receiving treatment.

16 MS. SHAW: Your Honor, just before Mr. Falk
17 continues, we have someone in the attendee list, Denice
18 Shrowder. And I don't know who that person is and these are
19 confidential meetings. Mr. Johnson is entitled to not have
20 outsiders listening in on his private proceedings. So could
21 we just verify who that is, please?

22 THE COURT: All right. All right, Ms. Shrowder,
23 Denice Shrowder, are you there? Denice Shrowder, can you
24 hear me? Denice Shrowder? Hello? Let me see.

25 MS. SHAW: Your Honor, I'm talking with victim

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1 services just to verify if Ms. Shrowder is actually a victim
2 or not, I don't think she is. No, Your Honor, she is not a
3 victim.

4 THE COURT: All right. Ms. Denice Shrowder, do
5 you hear me? I've got her unmuted.

6 All right. I just sent a chat out to see if
7 she'll respond to that.

8 Mr. Falk, do you know who Denice Shrowder is?

9 MR. FALK: No, I don't, Your Honor.

10 THE COURT: Does anyone on the list ---

11 MR. FALK: That's not our court reporter, right?

12 THE COURT: That's correct. That's not our court
13 reporter.

14 MR. FALK: What was the lady's name when we
15 initially had the guy from SCDC?

16 THE COURT: It was not Denice Shrowder, I don't
17 think.

18 MR. FALK: Okay.

19 THE COURT: This isn't anyone with regard with the
20 second hearing this afternoon, is it?

21 MS. SHAW: Not that I'm aware of.

22 MR. FALK: Not that I'm aware of.

23 THE COURT: Yeah, I'm trying to think if there was
24 some way I could delete them, but I don't know that I can
25 delete them.

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1 MS. SHAW: Your Honor, we had this problem with
2 Judge Hocker last week and what he did was -- he actually
3 put this part of, like what we're doing right now, into
4 practice mode, which prevents outside parties which haven't
5 been put on the panelist list from being able to see and
6 hear what's going on.

7 THE COURT: Put it on what mode?

8 MS. SHAW: In practice mode. And he was able to
9 boot a couple of people who were trying to get into the
10 hearing from the attendee list to prevent them from
11 violating confidentiality.

12 THE COURT: Well, you're going to have to explain
13 to me how to put it into practice mode.

14 MS. SHAW: Your Honor, I'm sorry, I'm not sure
15 Judge Hocker knows, though.

16 THE COURT: I've got a problem with Ms. Shrowder
17 not responding to my chat or my questions.

18 MS. SHAW: And, Your Honor, Ms. Allen just
19 confirmed that she is not victim in this afternoon's case
20 either.

21 Your Honor, I'm going to see if I can figure out
22 in my own office to see if we can get it in practice mode.

23 THE COURT: Well, now mine's not showing my
24 attendees either.

25 MS. SHAW: I have Chris Runyon, Barbara Floyd,

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1 Doug Shupe, Trisha Allen, those are all supposed to be
2 there.

3 THE COURT: Wait a minute, let me check this.
4 I've got Denice Shrowder, let's me see if I expel, if that
5 does it. All right. There we go. I did -- I had to put
6 her back to an attendee and then I could expel her. So
7 that's what I did.

8 All right. Mr. Falk, you can go ahead and
9 continue with your questioning.

10 BY MR. FALK:

11 Q. Would you say sexual recidivism is one of the
12 goals of providing treatment to sexually violent offenders?

13 A. Yes.

14 Q. Thank you. You had also -- your report also
15 considers some of the Mr. Johnson's dynamic risk factors?

16 A. Yes, that is correct.

17 Q. Is lack of emotionally intimate relationships with
18 adults, is that considered a dynamic risk factor?

19 A. Yes, it is.

20 Q. What did you find about Mr. Johnson as it relates
21 to that particular dynamic risk factor?

22 A. Yes. So Mr. Johnson had reported several
23 relationships where they have, again, stable and positive
24 relationships in the past. And as such that is one of the
25 reasons that I think that that specific factor does not

1 apply to Mr. Johnson.

2 Q. Is lifestyle impulsiveness one of the dynamic risk
3 factors?

4 A. Yes, it is.

5 Q. I think we've already talked about this, but do
6 you have any concerns about his lifestyle impulsiveness that
7 would relate to your opinion in this case?

8 A. No, I do not.

9 Q. Is resistance to rules and supervision a dynamic
10 risk factor?

11 A. Yes, it is.

12 Q. What about your interview or testing with
13 Mr. Johnson would affect your opinion in this case regarding
14 to his resistance to rules and supervision?

15 A. Yes, so again we looked into if there's been any
16 kind of specific behavioral management issues like
17 infraction as well as getting -- any significant behavioral
18 issues such as like breaking rules. Issues, like,
19 opposition to like external control. These are things that
20 define attitudes that will make an individual whether or not
21 this factor applies to them or not.

22 Q. Thank you. Can you look at the last sentence in
23 the last paragraph on Page 12 starting with, He has
24 demonstrated?

25 A. Which?

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1 Q. The last paragraph on Page 12.

2 A. Yes.

3 Q. Okay. Can you explain what that sentence means?

4 A. Yes. So I'm looking into that impulsivity or his
5 ability to control his behavior and that chances of that
6 individual engaging in any type of coercive type of
7 behavior. And by the testing or the assessment it showed
8 that Mr. Johnson was struggling or having any evidence of
9 impulsivity at that time.

10 Q. All right. What does -- what do you mean by your
11 words that, He successfully adopted pro-social attitudes?

12 A. So when I'm looking into the pro-social attitudes,
13 I'm looking into that individual -- how that individual may
14 behave or engage out in society based on gaining an
15 understanding, getting the insight as to his behavior, his
16 way of thinking, any kind of distortions, or anything that
17 influence his behavior. It's whether or not he has gained
18 that or whether or not that individual struggles with that.

19 Q. Can you explain how -- what impact a family
20 support has on somebody's ability to succeed once they're
21 released from the program?

22 A. Yeah. Well, as we know that Mr. Johnson has been
23 in the program environment for about 12 years. And so that
24 means that he has been a system in there, he has to interact
25 with other individuals within the program. Once the

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1 individual is released out into society, if they don't have
2 that level of support, it's one of the concerns for that
3 individual may go in and seek support for, or if the
4 individual is -- and would communicate with other people and
5 have that ability to have that support from others.

6 So when Mr. Johnson stated that he had the support
7 of his family and so that's a protective factor for him.
8 Something that also assists when it comes to an individual
9 being release out into society.

10 Q. Okay. Based on your evaluation process, your
11 review of the records, your testing, do you have an opinion
12 to a reasonable degree of scientific certainty as a forensic
13 psychologist of whether or not Mr. Johnson's mental
14 abnormality or personality disorder has so changed that he
15 is now safe to be at large if released?

16 A. Yes. So based on -- the based on the clinical
17 intake, the findings, as well as all of the reviewed
18 documentation, at this time Mr. Johnson's mental abnormality
19 has so changed that he is able to be safe at large out in
20 the society and not likely to be engaged in acts of sexual
21 violence.

22 MR. FALK: No further questions.

23 THE COURT: All right. It's ten to one, before
24 Cross-Examination, we'll go ahead and break for lunch, come
25 back at 1:45. I think it's safe to say we're not going to

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1 get to the second hearing today. What do you all say?

2 MS. SHAW: Your Honor, I'm inclined to agree. If
3 we could just push it and pick another date while we're all
4 on the line.

5 THE COURT: Okay. Well, we're not going to do
6 that now. Let's get through this -- we'll get through this
7 first case first and then we'll check on that. Okay?

8 MS. SHAW: Okay, Your Honor.

9 THE COURT: All right. we'll be in recess until
10 1:45.

11 (WHEREUPON, a break held from 12:51 p.m. until
12 1:45 p.m.)

13 THE COURT: All right. Our Court Reporter is
14 ready.

15 Ms. Shaw, Cross-Examination.

16 MS. SHAW: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. SHAW:

19 Q. All right. Dr. Baez-Lockard, you interviewed
20 Mr. Johnson on July 8th and August 10th, correct?

21 A. That's correct.

22 Q. And your report on Page 2 documents you did a
23 mental status examination on October 18th, correct?

24 A. Yes. I noted that there is a 10/18 2020, that was
25 a mental assessment.

1 Q. Okay. So I just wanted to clarify, you did not
2 meet with him on three separate occasions, it was just two
3 occasions?

4 A. Yes, ma'am.

5 Q. Okay. And on which date did you do the Hare and
6 the MMPI?

7 A. That would have been on August 10th, I believe. I
8 can refer back to my report.

9 Q. That's fine. Take your time.

10 A. Thank you. Actually, that's where the typo comes
11 in. So Mr. Johnson had the MMPI-2-RF, that happened on
12 September 18 of 2020.

13 Q. Okay. So the MM -- sorry. So the actual paper
14 testing occurred in September?

15 A. On September 18 of 2020, yes.

16 Q. Okay. And so the 7/8 and the 8/10 dates were just
17 when you interviewed him and spoke to him?

18 A. That is correct.

19 Q. Okay. Now, what is entailed in the mental status
20 examination?

21 A. Where we gather information regarding overall how
22 the individual is functioning at the time of the evaluation,
23 whether or not there's concerns with any hallucinations,
24 delusions, if the individual is being forthcoming,
25 cooperative, if the individual is being defensive, overt,

1 selection questioning, if there's any concerns. That's a
2 lot of the things that we look for.

3 Q. Okay. So would that be part of your clinical
4 interview or would that just be a completely separate type
5 of interview?

6 A. I perform that as part of my clinical interview,
7 as well, yes.

8 Q. Okay. So on September 18th you actually did do
9 another interview, a third one?

10 A. On September 18th, that's the date that he had the
11 testing.

12 Q. Okay. So the mental status examination is just --
13 is not correct, that's a typo and that's just -- it was just
14 testing on that date?

15 A. On -- on September 18th he only had the testing.

16 Q. Okay. Thank you.

17 Now, you -- in terms of the collateral information
18 that you reviewed, none of your notes reflect the dates of
19 the records that you reviewed. Could you please enlighten
20 us as to which treatment records your reviewed, what time
21 period, as well as whether you reviewed the precommitment
22 evaluation?

23 A. Yes, ma'am. Would you like to know more
24 specifically in regards to the direct care treatment?

25 Q. The Wellpath -- the Wellpath treatment records

1 that you received, what are the dates for them?

2 A. All right. I'm looking.

3 Q. All right. Take your time.

4 A. I looked at treatment records going back from 2016
5 all the way up to 2020. I did not -- I didn't have any
6 documentation past, I believe, there was August of 2020.

7 Q. Okay. But did you -- did you have any
8 documentation prior to 2016?

9 A. I have -- I looked at his -- no. Only 2016 on.

10 Q. Okay. And he's been committed since 2008, right?

11 A. Yes, ma'am.

12 Q. Okay. Did you request any of that information?

13 A. For Mr. Johnson, no, ma'am.

14 Q. Okay. Now, did you review the precommitment
15 report or the evaluation from 2008?

16 A. Yes.

17 Q. Okay. Did you review the annual reviews from 2008
18 to the most current one from Dr. Tross? Did you review all
19 of those?

20 A. I reviewed, again, from -- when it comes to the
21 evaluations I reviewed from 2016 to the most current one by
22 Dr. Tross on March 27th of 2020, I believe.

23 Q. Okay. So you didn't have those eight-years worth
24 of records?

25 A. Just from 2016 forward.

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1 Q. Okay. Now, what -- when you stated in Subsection
2 Number 2, you reviewed the Sexual Predator Referral Form and
3 the Synopsis Form. What are the dates of those forms that
4 you reviewed?

5 A. So the Referral Form is on September 20th of '07,
6 I believe it's the one I have. And for the Synopsis -- the
7 other one that you're looking for or?

8 Q. Well, I'm just trying to get what time period were
9 those from? Were those from the precommitment when the
10 multidisciplinary team referred Mr. Johnson to the PCR or
11 PRC, or is it from a later date, but it sounds like it's
12 from 2006/2007?

13 A. Yes, ma'am.

14 Q. Okay. Did you review his current NCIS report?

15 A. I do not have those records, no.

16 Q. Okay. And did you make any collateral contacts
17 with Mr. Johnson's family, his sister, brother-in-law to
18 confirm whether what he was reporting to you about his
19 community support was accurate?

20 A. I do not have that. No, I do not.

21 Q. Okay. So you didn't talk to anybody other than
22 Mr. Johnson?

23 A. Correct.

24 Q. Okay. And Mr. Johnson reported a fairly similar
25 personal history to what he reported in his prior

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1 evaluations, correct? Fairly normal childhood, an alcoholic
2 father, denied abuse of all three types, that kind of stuff?

3 A. Yes, ma'am.

4 Q. Okay. And do you know if he was cooperative with
5 Dr. Tross in her doing her evaluations, do you know if he
6 was willing to participate in that?

7 A. Just based on the information that she had on her
8 reports stated that he declined to be interviewed, but he
9 was -- yes, that he declined to be interviewed.

10 Q. Okay. So, regarding his sexual offenses do you --
11 describe what you know about them.

12 A. Would you like for me to tell you based on what I
13 know or based on what Mr. Johnson reported?

14 Q. Well, both. What do you know from the records and
15 then what did he disclose to you, if anything?

16 A. Yes. So based on -- based on the records of his
17 first offense that happened roughly in 1980 when he
18 approximately the age of 20, at that time it was a
19 17-year-old female that was unknown to him. And the
20 official records indicated that there was -- they were in a
21 motel parking lot when Mr. Johnson and another individual
22 approached the victim who was in a vehicle. The
23 individual -- he got out and grabbed her and put his hand
24 over her mouth, forced her into the truck. They were in the
25 back. There was another individual that drove the truck to

1 a different location. And where Mr. Johnson and that other
2 individual forced the victim and raped the victim at least
3 four times vaginally over a period -- within a period of
4 time. And at that time Mr. Johnson was charged with
5 criminal sexual conduct in the first degree, second degree,
6 and third degree, as well as kidnapping. And then he pled
7 guilty to criminal sexual conduct on the first degree and he
8 was sentenced to 30 years of incarceration.

9 So that's the first sexual offense.

10 Q. Okay. I'll stop you just one moment. How old was
11 he at the time that he committed that offense?

12 A. Twenty.

13 Q. Thank you. Okay, please proceed.

14 A. And when discussing that offense, it would be
15 easier if I go with the first one then the second one. So
16 that's the recommendation based on the records.

17 Now, based on the interview with Mr. Johnson,
18 again, in 1980, he's 20 years old, he indicated that he was
19 drinking, he was with a friend, they went clubbing. I
20 believe that this was in the Myrtle Beach area. He saw a
21 lady getting into a vehicle. He did ask her if she wanted
22 to do drugs. He put his hands around her neck, and him and
23 the other individual, he took the woman and raped her. And
24 then he dropped her off or they dropped her off at a 7-11.

25 He also indicated that his friend, or the other

1 individual, that guy had stolen a truck and he did not -- he
2 was not aware that he had stolen that -- that specific
3 vehicle.

4 So that was his recollection of what happened in
5 that specific offense. And then ---

6 Q. Well, actually, before you move on, did he admit
7 that he raped her?

8 A. Yes, ma'am.

9 Q. Did he indicate that he had any remorse for having
10 committed that offense to you?

11 A. Yes, ma'am, he did.

12 Q. What did he say, specifically?

13 A. He had specifically stated that he -- he was
14 ashamed and embarrassed for what he had done. That he
15 caused the victim a significant amount of pain. That for
16 the longest time he was extremely hard on himself, and
17 obviously made himself be in pain. The fact that he
18 committed that offense. And he felt remorse for what the
19 victim or the pain he actually had caused for the victim.
20 And he also indicated that he believed that the pain that he
21 had caused the victim will be a lifelong pain for that
22 individual. And that he -- let me look for what he exactly
23 stated -- and that he blames himself for what happened. He
24 notes the impacts of substances on his sexual offending and
25 that he plans on staying away. And how the negative impact

1 that it had on the victim.

2 Q. Okay. Let's go on to his second sexual offense.

3 A. All right. So the second offense happened in
4 2003. And at that time he would have been around 42 years
5 old. This was a 35-year-old woman that is an unknown
6 victim. And he approached the individual and he told her
7 that she was attractive and he wanted to have a relationship
8 with this individual. He walked to the victim and then
9 forced the victim to go into behind the bushes, pulled up
10 her shorts, and then he raped the victim.

11 Q. He actually raped her twice; isn't that correct?

12 A. Yes.

13 Q. Okay. So what did he indicate to you regarding
14 that particular offense?

15 A. Yes. So he indicated that he was walking down on
16 Main Street towards his friend's house. A woman was waving
17 at him. He stopped and he started to -- no, he didn't know
18 the individual and was not aware that the individual had an
19 intellectual disability. And stated that he then proceeded
20 to ask the woman to give him a -- his words were "a hand
21 job." And ---

22 Q. Actually, Dr. Baez-Lockard, didn't he, in fact,
23 tell her that he would stop raping her if she were to
24 masturbate him?

25 A. He did not state that to me, no.

1 Q. Okay. But isn't that in the record; isn't that
2 true?

3 A. Based on what the records states, yes.

4 Q. Okay. Thank you. So his account to you was, in
5 fact, different from what is documented in the records?

6 A. Yes. To an extent, yes.

7 Q. Okay. Now, did he tell you anything about the
8 criminal domestic violence complaint he received two weeks
9 after he was released in July of 1997, I believe? His wife
10 was the victim. Do you recall that?

11 A. Yes, he did. We talked about his relationship
12 with his wife. We talked about the individual's name,
13 Stephanie, 1986. And they were both on drugs. And one
14 incidence of criminal domestic violence.

15 Q. Okay. So he reported to you that he was on drugs
16 at the time he committed that offense right after he had
17 been released from prison?

18 A. Yes, he indicated that both him and Stephanie,
19 there was a history of them engaging in substances.

20 Q. And you testified earlier that Mr. Johnson
21 completed substance abuse treatment while he was initially
22 incarcerated, correct?

23 A. That he had stopped his AA meetings, yes.

24 Q. Okay. He had attended AA meetings, right?

25 A. Yes.

1 Q. Okay. That's different than actual substance
2 abuse treatment?

3 A. Yes. Specifically, yes. It's a group --
4 substance use -- alcohol treatment, yes.

5 Q. Okay. So he never actually attended formal
6 substance treatment despite his known history of substantial
7 substance use and abuse; isn't that correct?

8 A. I don't have any records to say whether he did or
9 he didn't.

10 Q. Okay. But there's nothing in the record that you
11 have before you that would indicate that he actually did?

12 A. Correct.

13 Q. Okay. Thank you. Now, you made note in your
14 report that he attended sex offender treatment while he was
15 incarcerated on his first charge. But isn't it true that he
16 actually discontinued sex offender treatment while he was in
17 jail because he felt he didn't need it?

18 A. Yes, according to also what he stated, he
19 indicated that he was part of the CSTAR program and that he
20 did indeed drop out at that time because he felt that he
21 wasn't getting the full benefit of the treatment.

22 Q. Okay. And then after he was released from prison
23 and immediately got the CVD charge, he was reincarnated
24 until December of 1997 and released. And please correct me
25 if I'm getting the -- oh, I'm sorry. I apologize. It was

1 2000.

2 MS. SHAW: And that's my bad, Your Honor, I
3 misread my own note.

4 BY MS. SHAW:

5 Q. After he was released following the CVD charge,
6 approximately how long was it until he committed the second
7 offense?

8 A. So he's released in -- released again in 2000, and
9 then the second offense happened in 2003.

10 Q. Okay. And he indicated to you, in fact, that he
11 had been in and out of jail that whole time on non-sexual
12 charges; isn't that correct?

13 A. I'm sorry. On what?

14 Q. On non-sexual offense charges during that 2000 to
15 2003 time period?

16 A. Yes, there was some other legal things that he had
17 gotten in trouble for, yes.

18 Q. Okay. But from your report, if I'm remembering
19 correctly, he indicated specifically he was, quote, in and
20 out of jail. Am I right?

21 A. Yes. That was his quote, yes.

22 Q. Okay. Thank you. So is there any evidence in the
23 record you have that following this second offense, and
24 before his commitment to the SVP program, that he completed
25 any substance abuse treatment or any form of sex offender

1 treatment while he was incarcerated?

2 A. As part of the DOC, no, I just have the
3 information from Wellpath.

4 Q. Okay. And is this any evidence in the record you
5 have before you that he completed substance abuse or sex
6 offender treatment while he was out in the community when he
7 participated?

8 A. I do not have that information, I do not.

9 Q. Okay. So there's nothing you have that says he
10 did?

11 A. Correct.

12 Q. All right. Thank you.

13 Now, Mr. Johnson does not have a GED at this
14 point, correct?

15 A. That is correct.

16 Q. But he is working on it?

17 A. That is -- he said that he's been working on it,
18 yes.

19 Q. Okay. And that's positive thing, right?

20 A. Yes.

21 Q. Okay. Now, regarding his mental health history,
22 you testified earlier about him possibly being diagnosed
23 with bipolar disorder. In all of the annual review reports
24 that you read, was that included as an active diagnosis for
25 him at any time?

1 A. Not as an active diagnosis, it was just something
2 that was recognized in the report, but there is something
3 that has been reported. However, there hasn't been a formal
4 diagnosis of bipolar.

5 Q. Okay. And you read his -- and in those annual
6 reviews you read Mr. Johnson's accounts of his offenses to
7 those evaluators, right?

8 A. Yes, ma'am.

9 Q. And would they be inconsistent with what he is
10 reporting currently?

11 A. Were there inconsistencies?

12 Q. Were there inconsistencies in the stories he told
13 to various different evaluators over time in the details of
14 his offenses?

15 A. Yes, I believe that there were some
16 inconsistencies throughout the years, yes.

17 Q. Okay. Thank you. Now, in addition to his
18 sexually violent offenses, Mr. Johnson has convictions for
19 assault and battery of a high and aggravated nature, assault
20 and battery with intent to kill, as well as assault and
21 battery, simple assault, and a criminal domestic violence
22 charge. Are you aware of those charges?

23 A. Yes, ma'am. I believe it's on Page 7 of my report
24 where I talked about some of the other offenses that were
25 non-sexual matters.

1 Q. Okay. And in terms of his reported numbers of
2 sexual partners that, he reported to you, approximately 15
3 to 20 including the use of prostitutes and one-night-stands.

4 Are you aware that he reported different numbers
5 in prior evaluations?

6 A. Yes, I was aware that he has reported that, which
7 is also very common on these evaluations, as well.

8 Q. Okay. But at least -- in at least one evaluation,
9 he was not being truthful with the evaluator, we just don't
10 know which one it was, right?

11 A. I would say the more word "truthful" wouldn't be
12 an accurate representation of what was going on. It's more
13 related to whether or not an individual recalls exactly how
14 many partners have they had.

15 Q. Fair enough. But, regardless, it was inaccurate?

16 A. Correct.

17 Q. Okay. Now, mister -- and I may have gone over
18 this, so I apologize if I'm repeating myself -- Mr. Johnson
19 reported to you that he had significant problems with
20 alcohol, and even started to drink when he was six or
21 seven years old. And I'm referring specifically to Page 5
22 of your report, if you need to verify.

23 And then at the age of 16 he started smoking
24 marijuana, abusing Klonopin, and then he began using cocaine
25 recreationally. And your report says "Oxy." What exactly

1 is Oxy?

2 A. Oxycodone.

3 Q. Okay. So opiate pain killers?

4 A. Yes, ma'am.

5 Q. Okay. And to your knowledge he didn't have any
6 sort of medical conditions which would justify a
7 prescription, right?

8 A. Especially not at that -- at that young age, no.

9 Q. Okay. Thank you.

10 Now, at this point in time he indicated he is
11 not -- actually, I'm sorry, you indicated that he is not
12 exhibiting any sort of problematic thinking behaviors -- and
13 I'll just go -- this is Page 8 of your report -- The victim
14 blaming, sexual entitlement, rape attitudes, and attitudes
15 toward child molestation. He doesn't present evidence --
16 ever presents evidence of maintaining those attitudes or
17 thinking, right? That's a direct quote from Page 8?

18 A. Yes, ma'am.

19 Q. Okay. Mr. Johnson has never molested a child;
20 isn't that correct?

21 A. That is correct.

22 Q. He rapes adult women?

23 A. Yes, ma'am.

24 Q. Okay. What specifically did you question him on
25 regarding victim blaming?

1 A. I asked him if specifically -- so the question
2 that I asked him was, Who was responsible for the -- his
3 criminal behavior, as well as what effect his criminal
4 behavior had on the victims, having to feel remorse for the
5 crimes you committed, and are your offenses planned or spur
6 of the moment.

7 Q. Okay. And what did he say to you specifically?

8 A. So he indicated that he was responsible for his
9 behavior. And, again, we -- as I previously stated, the
10 impact that he had on his victims. He acknowledged that he
11 felt guilty and ashamed for his crimes. And in regards to
12 whether or not the offenses were planned or spur of the
13 moment, he indicated these were not planned offenses.

14 Q. Okay. So they were impulsive decisions?

15 A. They were spur of the moment, yes.

16 Q. Okay. And what did you ask him about his rape
17 attitudes?

18 A. So I specifically asked him how his view on, not
19 only of women but also in regards to sex, and how he would
20 perceive any kind of consensual sexual interaction with age
21 appropriate individuals.

22 Q. And what did he say?

23 A. So he stated that he believes in consensual sex.
24 That he knows attitudes, based on his past behavior, that he
25 engaged in what we also call, like, sexualized violence.

1 However, when indicating his interest, specifically sexual
2 interest when engaging in a sexual type of behavior, he
3 stated that he wants to engage in sexual activity with
4 consensual adults, and that is his view in regards to any
5 kind of sexual fantasies or any kind of sexual thoughts.

6 Q. Okay. But that's not documented with his criminal
7 history, right? In fact, his criminal history speaks
8 directly otherwise; isn't that true?

9 A. Right. And we have our static, again, which is
10 his legal records. And then we have factors that are not
11 stable, because they're changing. In fact, that's where the
12 dynamic risk factors come in, and that's where that
13 information comes in.

14 Q. And, in fact, sexualized violence is a dynamic
15 risk factor; isn't it?

16 A. Yes, ma'am.

17 Q. Okay. We'll get to that in a minute.

18 So when you interviewed him, did you ask him what
19 phase of treatment he is in?

20 A. Yes, ma'am. That is the first thing I asked. I
21 asked him in regards to his treatment program and level of
22 care.

23 Q. And what is his progress -- what is his phase in
24 the treatment program and what is his care level?

25 A. So at the time of the interview it was 2.1 Level

1 5.

2 Q. Okay. And Level 5 is the highest level of
3 privileges within the unit, correct?

4 A. Yes, ma'am. Based on if the individual has had an
5 infraction or not.

6 Q. Okay. And Level 2.1 is roughly halfway through a
7 four-phase treatment program, right?

8 A. I have not -- I don't have in front of me what
9 the -- how many levels specifically there are, but if you
10 say that's halfway, then I'll go with what you're saying.

11 Q. Well, are you aware that the SVPTP program is a
12 four-phase treatment program?

13 A. Yes. So within each phase you have like a 2.0,
14 2.1, that's in standard in regards to like where would
15 that -- if that's considered halfway or not.

16 Q. Okay. Well, we would agree that two is half of
17 four, right?

18 A. Yes.

19 Q. Thank you. And with regard to his treatment, he
20 indicated that he feels he doesn't need sex offender
21 treatment. That would be consistent with him dropping out
22 of the CSTAR program when he was in prison, right?

23 A. If your indicating in regards to the CSTAR program
24 at the time when he dropped out of the program, because he
25 felt that he was not benefiting from the program.

1 Now, if we're talking in regards to currently, he
2 indicated that he's able, he also believes that he can
3 continue to get help in the outpatient setting, however ---

4 Q. I'm sorry. Could you repeat yourself, you were
5 breaking up.

6 A. I'm referring back to -- if you're referring to
7 what was on the CSTAR program, on the CSTAR program he
8 indicated that he dropped out because he felt that he wasn't
9 getting benefit from it versus now. Once I did the
10 interview, in regards to treatment, he stated that he
11 continued to benefit from having outpatient treatment just
12 not in a confined facility.

13 Q. Okay. So -- but in your report you indicated
14 that he denies he feels the need for inpatient sex offender
15 treatment, right?

16 A. Right.

17 Q. Is that exactly what he said or did he just say,
18 No, I don't feel like I need treatment at all?

19 A. No. He just said he indicated that he did not
20 need inpatient treatment.

21 Q. Okay. And in your report also on Page 8, you
22 stated that when he was asked if and how he had changed
23 since he was admitted to the SVP in 2008, he only reported
24 to you that, He has grown by learning to treat people the
25 way you want to be treated, and he learned about certain

1 dynamic risk factors, right?

2 A. He learned about his dynamic risk factors. And he
3 also learned about the impact, again, on victims. He also
4 learned about himself and some of the difficulties that he
5 struggles with throughout his life. There was a lot
6 information that he provided in regards ---

7 THE COURT: I'm sorry. I'm sorry. Somebody is
8 moving some papers and I couldn't hear your testimony.

9 Say that again.

10 THE WITNESS: Yes. So he also -- part of the
11 things that he has learned also regarding, again, self
12 esteem, the impact of substance use, being able to
13 understand the victim's pain and the negative effect on the
14 individual.

15 BY MS. SHAW:

16 Q. So has he specifically indicated to you that he
17 has any sort of actual realistic plans for how he plans to
18 manage the dynamic risk factors that have been identified
19 repeatedly over the last 12 years? Did he give you any
20 specific information?

21 A. Yes. So he addressed that -- he addressed
22 triggers that he thinks could potentially increase the
23 likelihood that he will reoffend. So he talked about
24 staying away from substances. He talked about being able to
25 recognize if he's in a relationship, if it's a healthy,

1 positive relationship where there's no violence in the
2 relationship. Learning how to communicate. He stated that
3 communication was a strong factor for him because of his
4 overall personality. He tends to be more of an
5 introvert-type of individual. He also talked about
6 utilizing the support of his family. Being able to use --
7 going to a counselor. And staying away from social
8 influences, which also relates back to the substances use,
9 as he stated that that was the group of people that he used
10 to spend time with.

11 Q. Okay. And he said all these things and he feels
12 he can adequately manage himself if released to the
13 community with no oversight to ensure he actually attends
14 these treatments and unconfirmed family supports as well as
15 no completed sex offender treatment, drug treatment, or
16 domestic violence treatment?

17 A. Yes.

18 Q. He feels he can adequately manage all of this?

19 A. Yes, ma'am. He, again, when he ---

20 Q. That's fine. That's all I needed. I'm sure
21 Mr. Falk with redirect you.

22 A. Okay.

23 Q. So you administered the MMPI, correct?

24 A. Yes, ma'am.

25 Q. And that's all self report, right?

1 A. I'm sorry. Excuse me?

2 Q. The results of the MMPI are all based on self
3 reports from the individual who is submitting to the test,
4 right?

5 A. Yes, ma'am.

6 Q. Okay. And you did note that he experienced some
7 contents inconsistent response -- responded due to a
8 non-cooperative test-taking approach, yet you testified on
9 direct he was open and cooperative.

10 So which of these is the actual reality?

11 A. When I'm discussing him being open and cooperative
12 during the interview process, he was open and cooperative
13 with me as the evaluator.

14 Q. No, Doctor, you said on Direct -- and I have it in
15 my notes -- that with the MMPI, you said, He was open and
16 cooperative during the process of taking it. Yet your
17 report documents that there are six contents inconsistent
18 responding due to a non-cooperative test-taking approach.

19 So is the test accurate or how can you explain
20 that?

21 A. Yes. So when it relates to him being cooperative
22 when taking the test, meaning he was not engaging in any
23 kind of defensive-type of behavior. If you ask him true or
24 false, if the individual tries to justify why they would
25 answer true or why they would answer false. So you have how

1 the individual -- when they're taking it their overall
2 approach to the test versus what the actual T scores in
3 regards what was the approach, how was he responding to
4 that. So that's how it's different.

5 Q. Okay. So he wasn't faking good or faking bad, but
6 he did have inconsistent responses which would indicate some
7 level of resistance to the test-taking procedure, right?

8 A. Right. Not him as when I'm providing the test,
9 it's more of like what the actual score reflects.

10 Q. Okay. Yeah, I understand. Thank you.

11 And in his scoring, you indicated that he has a
12 significant history of antisocial behavior as well as
13 various manifestations of disconstrained behavior implying
14 the engagement in acting-out behaviors, acting out
15 impulsively, and seeking sensation and excitement. And that
16 was from the -- what would be considered a current snapshot
17 of his present intellect -- oh, I'm sorry -- psychological
18 functioning, right?

19 A. Yes, ma'am.

20 Q. Okay. He also endorsed a lack of positive
21 emotional experiences, significant anhedonia -- which just,
22 in case everybody doesn't know, it is what, Doctor? What is
23 anhedonia?

24 A. Yes. So it's a lack of interest in him, having
25 like a negative outlook in life, feeling disengaged, having

1 no energy, depressed.

2 Q. Okay. And anhedonia means just not feeling happy
3 or inability to feel happiness?

4 A. Yes.

5 Q. Okay. But he endorsed all of those and you
6 concluded that he is intellectually pessimistic, socially
7 introverted, and socially disengaged, right?

8 A. Yes, ma'am.

9 Q. Does it sound like someone who is likely to reach
10 out to community supports or seek out treatment where he
11 would be held accountable by total strangers?

12 A. Well, that's one thing that if you're able to look
13 into how he's reached out to case management as well as
14 there's a difference between an individual that he may trust
15 versus an individual that he may not trust.

16 So since he has that family support, these
17 individuals that have been communicating throughout his time
18 at the program where he could reach out to them.

19 Q. Well, let's talk about his case manager, because
20 back in 2019 he actually indicated he didn't feel he needed
21 case management services, didn't want to talk to his case
22 manager, and actually disengaged in treatment in July of
23 2019. Do you recall reading that?

24 A. Yes, ma'am.

25 Q. Okay. So even in a controlled setting,

1 Mr. Johnson was not inclined to take advantage of the
2 resources that were being offered to him, right? Is that
3 what those records reflect?

4 A. I would disagree on that specifically because he
5 did ask for him to be placed in a special needs group. So
6 if someone feels that they're not getting the most out of
7 treatment, and that he feels that in one way or the other
8 he's not able to keep up with the work, or been able to
9 provide the information that's requested by his case
10 manager, then the individual may seem more resistant towards
11 treatment.

12 Q. Okay. But isn't it true back in 2019 when he
13 discontinued his treatment that he reported, again, that he
14 does not feel the need for sex offender treatment?

15 A. I believe that's what the case notes stated.

16 Q. Okay. Thank you. And then when he reengaged in
17 treatment in January of 2020 he was in fact accommodated and
18 placed on the special needs track. But immediately when he
19 was assigned a treatment assignment, he indicated that he
20 did not feel the need to complete it and that he was in no
21 hurry to level up. Do you recall reading that?

22 A. I don't recall specifically what the -- what's
23 stated, but it sounds familiar.

24 Q. Okay. Thank you. And do you, in fact, know if he
25 has completed any additional treatment assignments since you

1 interviewed him?

2 A. I do not know, I don't have his most current
3 treatment, no.

4 Q. Okay. But at the time you met with him as late as
5 July, I believe, he didn't indicate that he had completed
6 any additional assignments to you?

7 A. No, at the time he stated that he was on the 2.1
8 and he wasn't, yeah.

9 Q. Okay. Now, in addition to the MMPI, you completed
10 the Hare Psychopathy Checklist, right?

11 A. Yes, ma'am.

12 Q. Okay. And you testified on Direct that the Hare
13 is actually designed to assess for antisocial personality
14 disorder; is that correct?

15 A. It's measuring the concept of psychopathy.

16 Q. Okay. So it's not, in fact, a diagnostic tool for
17 antisocial personality disorder?

18 A. Not for antisocial, no. It's just part of -- it's
19 a trait that is found on antisocial personality disorder.

20 Q. Psychopathy is found for antisocial? It's
21 typically found there?

22 A. It's one of the -- a trait of an individual,
23 things like specific behaviors that are found with an
24 individual with psychopathy.

25 Q. Okay. And you noted that Mr. Johnson has multiple

1 dynamic risk factors, but you felt that he had managed to
2 modify several of them, right?

3 A. Gained the knowledge and the insight, yes, ma'am.

4 Q. Okay. And you identify -- in your report you only
5 identified 11, but isn't it true that there's actually 12
6 empirically supportive dynamic risk factors and an
7 additional four which are strongly correlated?

8 A. So there's promising factors as well as
9 empirically risk factors.

10 Q. But there's 12, right?

11 A. Yes.

12 Q. Okay. Because your report only lists 11. I just
13 want to make sure I'm not missing something.

14 A. Yes. It has -- yeah, it does not also reflect,
15 like, the promising risk factors either.

16 Q. Correlations, it doesn't those, right?

17 A. The promising risk factors, no, ma'am, it does
18 not.

19 Q. Okay. And you indicate in your report, and I'll
20 just refer you to Page 12, that you felt that lack of
21 emotional intimate relationships with adults, lifestyle
22 impulsiveness, and resistance to rules and supervision were
23 no longer a problem for Mr. Johnson, right?

24 A. Correct.

25 Q. But you also identified that he does exhibit

1 difficulty with continued poor problem solving, grievance,
2 hostility thinking, and negative social influences, right?

3 A. That he has specific difficulty with those, yes.

4 Q. Okay. And he continues to, to the best of your
5 interpretation?

6 A. Based on his management reports, as well, then,
7 yes.

8 Q. Okay. So those factors about his personality
9 dysfunction have not changed?

10 A. At my evaluation, no, ma'am.

11 Q. Okay. Thank you. Now, you diagnosed hi with
12 other specified personality disorder with antisocial
13 features, correct?

14 A. Yes, ma'am.

15 Q. And this disorder is a lifelong chronic condition,
16 correct?

17 A. Yes. Although, again, it's with antisocial
18 features, so, yes.

19 Q. Well, the personality disorder is a lifelong
20 condition and the best a person diagnosed with it can hope
21 for is to manage it effectively?

22 A. Yes. However, it's also a diagnosis as stated as
23 other specified personality disorder. So to be able to say
24 that it's a lifelong disorder if the individual does not
25 meet full criteria for antisocial personality disorder.

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1 Q. Well, he's not diagnosed with anything, right?

2 A. Correct.

3 Q. He's just got features of it in the other
4 specified personality disorder?

5 A. Correct.

6 Q. Okay. Thank you. Now, you also conducted the
7 statics. The Static-99, and 2002R, correct?

8 A. Yes, ma'am.

9 Q. And you achieved -- you got scores of seven and
10 six, respectively, right?

11 A. Score six on the Static-99, and seven -- no, I'm
12 sorry, six on the 2002R, yes.

13 Q. Okay. And a score of six on the Static-99 is a
14 well above average risk category, right?

15 A. Yes, ma'am.

16 Q. And a score of six on the 2002, you indicated in
17 your report puts him in the moderate range, but, in fact,
18 the control group that he would be assigned to would be
19 above average, per the rule book, right?

20 A. All right. For the 2002 a score of six, one of
21 the labels for the risk category is moderate.

22 Q. And is one of the other labels above average?

23 A. I don't have that one, that specific scoring that
24 Dr. Tross may have used, but you could, yes.

25 Q. Okay. So that could be a designation with a score

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1 of six on the 2002R?

2 A. Yes.

3 Q. Okay. So, overall, on both of these actuarial
4 instruments, his risk falls into above average to well above
5 average, right?

6 A. Yes.

7 Q. Okay. Thank you. Now, just...

8 MS. SHAW: I'm almost done, Your Honor, if I may
9 just have one moment to double check my notes?

10 THE COURT: All right. Take your time.

11 MS. SHAW: Thank you, Your Honor.

12 BY MS. SHAW:

13 Q. Now, in conclusion, despite the fact that
14 Mr. Johnson has a substantial and well documented history of
15 substance abuse, including immediate recidivism to using
16 substances when he's released in the community, and no
17 documentation of having ever completed substance abuse
18 treatment, or even currently attending or previously
19 attending NA/AA meetings, unless he was incarcerated, you
20 still believe that substance abuse is not going to be a
21 major issue for him despite or including the issues he's got
22 with antisocial influences?

23 A. I do. And one of the reasons for that is --

24 THE COURT: Wait a minute. I'm sorry, I couldn't
25 hear you. Can you repeat that?

1 THE WITNESS: Yes, sir. One of the reasons that I
2 say that, as well, is when I discussed the substance use
3 with Mr. Johnson and we discussed when was the last time he
4 actually used any kind of substances, we also addressed
5 whether or not he has used substances being either inside
6 the Department of Corrections or while in Wellpath. And he
7 stated that, Yes, that he used them at the time when he was
8 incarcerated. However, the last was in 2004. So even
9 though he's in confinement, as he was in the past, he has
10 not engaged in any substance use.

11 Q. Well, as of 2004, he was using substances while
12 incarcerated. And, in theory, this is a controlled
13 environment where he shouldn't be able to access them,
14 right?

15 A. In theory you would think that someone would not
16 be able to access them. However, they are, unfortunately,
17 able to access them. So for him to be able to control that
18 urge or wanting to engage in any kind of substances also
19 lets you know that he has been able to control his
20 substances.

21 Q. Okay. Well, he's in -- he's in an environment
22 where they are controlled for him and his history indicates
23 that he'll go right back to using when he's released, right?

24 A. I'm sorry, you just...

25 Q. Did I break up?

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1 A. Yes.

2 Q. Sorry. What I said was: He has a long history of
3 using substances including a history of going right back to
4 using them as soon as he's released. Is there any
5 indication that he has the tools to prevent himself from
6 going back to them?

7 A. Well, again, based on his -- again, not only
8 treatment, but also his ability to abstain from substances.
9 Because, again, he used them while he was incarcerated. So
10 it's not a matter of whether he has access to them, I'm sure
11 that he has access to them, but he has been able to refrain
12 from using substances.

13 Q. But if he has no access in the SVP program, how
14 can you say that he is going to be able to abstain when he's
15 released into the community?

16 A. Because that's what I said, they do have access,
17 illegal access, but they're able to have different
18 substances while in the program.

19 Q. So is it your testimony today that there are
20 illegal substances available to residents at the SVP
21 program, that you're aware of?

22 A. I did not say that they are available to them.
23 I'm saying it's similar to the prison where the individuals
24 are able to create their own substances, let's say, and even
25 though that it shouldn't be available to them, whether

1 there's no way for them to be able for them to gain any kind
2 of substances, they're able to get ahold of them at point or
3 another whether they're incarcerated or while they're in the
4 program.

5 Q. So do you know of any instances while Mr. Johnson
6 has been in the SVP program where he has been offered
7 substances and refused or had access to them?

8 A. I don't have any documentation to say whether or
9 not he was offered any kind of substances, no.

10 Q. Okay. So you don't know, basically?

11 A. I do not know.

12 Q. Okay. Now, with respect to his sex offending
13 history, he never completed CSTAR when he was in prison. He
14 is currently only halfway through the SVPTP Program at Level
15 2.1. He disengaged treatment in 2019. Only recently
16 reengaged in January 2020 and indicated no motivation to
17 continue treatment.

18 Yet, you claim, in your report, that he has
19 finished treatment; is that correct?

20 A. I addressed that he has been motivated for
21 treatment, he requested to be placed on a special needs
22 group.

23 Q. And that was accommodated, but then he immediately
24 said that he's not going to do his treatment assignment
25 because he feels no need to level up, you acknowledged that.

1 But how can you say he has finished treatment with
2 all of these outstanding issues and the lack of completion
3 of any formal program?

4 A. If you're referring to whether or not he's figured
5 out a way to cope or whether or not he still needs
6 treatment, he -- when we at look all the factors combined,
7 whether it is his psychological testing, as well as dynamic
8 risk factors, as well as the interview, whether or not that
9 individual's diagnoses, as well as medical -- not medical --
10 mental health abnormality will make him likely to reoffend.

11 Q. So despite not having completed any treatment,
12 showing minimal motivation, which I believe you testified to
13 on Direct, his treatment records shows he's minimally
14 engaged in the program when he does, in fact, show up. You
15 still feel his mental abnormality has so changed that he is
16 safe to be in the community?

17 A. I ---

18 Q. It's just a "Yes" or "No" answer. I'm sure
19 Mr. Falk will adequately redirect you.

20 A. Yes.

21 Q. Okay. And this is also despite the fact that he
22 still has at least three active dynamic risk factors at high
23 statics?

24 A. Yes, ma'am.

25 Q. Okay. I have -- and, again, just to bring the

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1 point home -- you didn't verify with his family and alleged
2 community supports that they actually will allow him to stay
3 with them and will be a support to him?

4 A. I did not communicate with them, no.

5 Q. Okay. And that would be important, right, to know
6 if these people are, A, willing to be supports to him; B,
7 able to be supports to him; and, C, have the knowledge and
8 wherewithal to ensure that he is held accountable for his
9 behavior. That would be important to know, right?

10 A. Yes.

11 Q. Thank you.

12 MS. SHAW: Nothing further.

13 THE COURT: All right. Redirect?

14 MR. FALK: Yes.

15 REDIRECT EXAMINATION

16 BY MR. FALK:

17 Q. Regarding Mr. Johnson's high statics, nothing is
18 going to happen from now until he's put in a pine box that's
19 going to change his static numbers; is that correct? Other
20 than him turning 60 and his statics would go down two
21 points?

22 A. That's correct.

23 Q. So a high static is not a -- I'll just leave it at
24 that.

25 Your opinion is based on whether or not on the

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1 date of your report he was ready for release; is that
2 correct?

3 A. That is correct.

4 Q. What would the relevance be in your annual -- you
5 had said that you looked at annual evaluations from 2016,
6 '17, '18, and '19; is that correct?

7 A. That is correct.

8 Q. What would the value be of looking at annual
9 reviews that were -- occurred six years ago?

10 A. Looking in regards to his progress ---

11 Q. As to what his -- what his condition is today?

12 A. To be able to -- yes, to be able to compare and
13 see his progress from five, six years ago, to how he's doing
14 today.

15 Q. But still the question is not what his condition
16 was in 2014, the question is what is his condition today; is
17 that correct?

18 A. That is correct.

19 Q. Okay. What relevance would his NCIS report be to
20 his condition today?

21 A. I do not know what the specific relevance based on
22 what the previous questioning was, I do not know.

23 Q. Okay. And it's true that he pled guilty in 1981;
24 is that not correct?

25 A. Yes.

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1 Q. So there was no trial in 1981; is that correct?

2 A. As far as I know, correct.

3 Q. And he pled guilty in 2004; is that correct?

4 A. Yes. 2004, yeah, July, yes.

5 Q. And is it your understanding that if somebody
6 pleads guilty then there's not a trial; is that your
7 understanding?

8 A. Yes.

9 MS. SHAW: Your Honor, I'm going to object to this
10 line of questioning. It's not relevant whether he pled
11 guilty or whether there was a trial. The convictions stand
12 as they are, CIC would have that.

13 THE COURT: All right.

14 MR. FALK: Your Honor, I have a point, if I could
15 finish.

16 THE COURT: Well, I mean, how is this -- what was
17 brought up -- how does this apply to Redirect, I guess, my
18 question is: What was addressed on Cross?

19 MR. FALK: Ms. Shaw referred to the record that
20 had been established in this case.

21 THE COURT: Okay. Go ahead. I'll allow it.

22 BY MR. FALK:

23 Q. So there was no trial transcript generated in this
24 case; is that correct?

25 A. That is correct.

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1 Q. So any information -- so what is the basis for any
2 of the information about the circumstances leading to his
3 arrests in 2003 and 1980?

4 A. I'm sorry, can you repeat that again?

5 Q. What information did you have that told you about
6 his arrests -- the facts leading to his arrests in 1980 and
7 2003?

8 A. Yes. So I had his written records as well as
9 his -- not his wrap sheet, but for lack of a better word ---

10 THE COURT: I'm sorry, if you keep moving papers
11 then we can't hear what you're talking about. The audio is
12 picking up the papers flipping versus what you're saying.

13 So, could you repeat that? I couldn't understand
14 what you were saying.

15 THE WITNESS: Yes. So I had a chance to look at
16 warrants, different indictments, and sentencing sheets in
17 regards to this.

18 BY MR. FALK:

19 Q. Okay. So any factual recitations would all be
20 based on statements in the warrants; is that correct?

21 A. Yes.

22 Q. Okay. And is it your understanding that those
23 warrants would be based on statements made by victims in
24 this case?

25 A. Correct.

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1 Q. So any statements about -- so anything that was
2 attributed to one of the victims, that really comes from her
3 statement; is that correct?

4 A. From the victim, yes.

5 Q. Yes. And so it's no -- that was never
6 cross-examined; is that correct?

7 A. That is correct.

8 Q. Okay. Did you have an opportunity to read the...

9 THE COURT: We just lost Mr. Falk?

10 MS. SHAW: It says, Due to Low Band Width or Local
11 Conditions Not Available.

12 THE COURT: Let's wait and see if he pops back in.

13 He must have logged out and he must be trying to
14 log back in. Let's give him a minute.

15 THE WITNESS: Your Honor, may I be excused for one
16 second just to get some of the noise in the background away?

17 THE COURT: All right. That will be fine.

18 THE WITNESS: Thank you.

19 THE COURT: All right. There he is.

20 All right. Mr. Falk?

21 MR. FALK: Can you hear me now?

22 THE COURT: Yeah, you're back with us. Go ahead.

23 BY MR. FALK:

24 Q. All right. I'm sorry -- let me just -- I was
25 asking you about if you had an opportunity to look at -- you

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1 had testified that you reviewed some of the prior annual
2 evaluations; is that correct?

3 A. Yes, sir.

4 Q. And did you happen to look at Dr. Swan's
5 evaluation from 1/6/2016?

6 A. Yes, I looked at all of the evaluations starting
7 from 2016.

8 Q. Did you happen to see where Dr. Swan in her report
9 stated on Page 6, That SCDC records indicate that in May
10 1992 Mr. Johnson was terminated from CSTAR Phase 1 for poor
11 attendance. That he successfully completed the same phase a
12 year later with good participation.

13 Did you see that?

14 A. Yes, I did.

15 Q. Okay. Is it clear whether he completed CSTAR or
16 not?

17 A. Based on her statements that he successfully
18 completed that.

19 Q. Thank you. And it's still your opinion that his
20 situation has changed, that he is ready for release?

21 A. Yes, sir.

22 MR. FALK: No further questions.

23 THE COURT: All right. Ms. Lockard, you can step
24 down. You're welcome to stay with us or you can be excused,
25 whichever you -- well, just stay with us for right now.

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1 All right. Mr. Falk, do you have anybody else you
2 want to call?

3 MR. FALK: No, Your Honor.

4 THE COURT: All right. Ms. Shaw?

5 MS. SHAW: Your Honor, at this point in time I
6 would make a motion for a Directed Verdict. The testimony
7 elicited from Dr. Lockard does not support any conclusion
8 under probable standard or otherwise that Mr. Johnson's
9 mental status has changed. She acknowledged that he
10 continues to display dynamic risk factors. That he does
11 have a diagnosable mental abnormality. She has indicated
12 that she has not verified whether there are any community or
13 family supports available to him as his self-serving self
14 report would indicate there might be.

15 He has two very serious convictions for the exact
16 same type of offenses. He has not completed any sort of sex
17 offender, substance abuse, or any other mental health
18 treatment. And he continues to display active dynamic risk
19 factors in addition to the very high statics.

20 So I would submit that all of that evidence, which
21 Dr. Lockard testified is true, does not qualify Mr. Johnson
22 for a finding that his mental status has changed and
23 therefore he would be entitled to a trial.

24 THE COURT: All right. Mr. Falk?

25 MR. FALK: Well, the record is clear that he has

1 been in the sexually violent predator treatment program
2 since 2008. Whether or not he has completed treatment to
3 the Attorney General standards or not, my expert testified
4 that she believes he is ready for release at this time.

5 Again, we have a probable cause standard. We do
6 not have -- I don't have to necessarily prove beyond a
7 reasonable doubt by a preponderance of evidence that he is
8 ready for release at this time. I think there's clearly a
9 question of fact that must be left to the jury to decide
10 whether or not he is ready for release.

11 I have a qualified expert who has opined that she
12 believes he's ready for release. The State has some
13 concerns about her opinion. However, again, that would --
14 she's qualified to testify in this field. She's given her
15 opinion. And she is -- you know, she's entitled to her
16 opinion. And the jury is entitled to weigh the opinions of
17 Dr. Lockard against whoever the State would put up in this
18 case.

19 So I think we clearly have a clear case of
20 probable cause at this time.

21 MS. SHAW: And, Your Honor, if I may just respond.

22 In the matter of Tucker 578SE2nd at 722 from 2018:
23 In the context of a probable cause hearing to believe
24 someone is a sexually violent predator, probable cause
25 requires that the evidence presented would lead a reasonable

1 person to believe and consciously entertains suspicion that
2 the person meets the definition of a sexually violent
3 predator. That's the Care and Treatment of Chandler versus
4 State, 382SE250, 2009.

5 Probable cause does not demand any sort of showing
6 that it believe to be correct or more likely true than
7 false. So the fact of the matter is that simply putting a
8 warm body up there to say that, Yes, this guy has changed,
9 does not take away the Judge's responsibility to determine
10 whether the standard has been met.

11 And, you know, the argument undermines the purpose
12 of this annual review gate keeping function for Your Honor,
13 because it's just says, Well, no matter how unbelievable, or
14 incredible, the opinion of the Petitioner's expert may be,
15 just because she's there and says he's changed, that
16 automatically meets probable cause, and that is not the law
17 and that is not the standard.

18 THE COURT: All right.

19 MR. FALK: Your Honor, the standard is somewhere
20 between suspicion and suspicion evidence to convict.

21 THE COURT: And I ---

22 MR. FALK: That's the probable cause standard --
23 that's a criminal probable cause standard.

24 THE COURT: All right. And I understand that.

25 Mr. Falk, I mean, I'm going to be honest with you,

1 this is very, very close akin, and even though it's an
2 unpublished opinion, in re Bennington, which quotes Tucker.

3 Which says: Bennington alleges that the trial
4 Judge should not waive the evidence presented at the
5 hearing, but should limit the determination to the existence
6 or nonexistence. Although our courts have not explicitly
7 stated a standard for these types of hearings, Tucker and
8 Corley, basically state that the trial court is supposed to
9 testify the sufficiency of the evidence in making a
10 determination.

11 The problem I've got is in Bennington it was the
12 same type of situation. You had somebody who they said is
13 free to be at large, but still needs treatment. And there
14 was no indication that the person was going to get the
15 treatment on their own.

16 And I think that's -- the problem I've got, at
17 this juncture, is I can't tell whether Bennington was at
18 Directed Verdict stage or what else the Judge had in front
19 of him or her in making the decision.

20 Bennington it was just a probable -- and it just
21 says it was a probable cause hearing, that, just like this,
22 there were indications that, obviously, Bennington had
23 expert testimony that said, He doesn't -- doesn't pose a
24 threat of harm once he's released because he's got this
25 outpatient treatment that he can go through. But the Judge

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1 found that, No, there' no probable cause, because there's
2 nothing to indicate that he's going to followup with the
3 treatment.

4 Now, I'd like to say, there's nothing to indicate
5 whether that was at a Directed Verdict stage or not at a
6 Directed Verdict stage.

7 So at this juncture, I'm going to go ahead and
8 deny your motion for a Directed Verdict. And let me hear --
9 hear from the State. Although, I do -- I emphasize that the
10 burden of proof is on the Respondent to prove probable
11 cause. And all we've got now is the uncontested
12 Respondent's case at this point in time.

13 So, Ms. Shaw, let me go ahead and hear from you
14 all, okay?

15 MS. SHAW: Absolutely, Your Honor, my pleasure.

16 First things first, as a matter of housekeeping,
17 I'm assuming Mr. Falk is not going to consent to Dr. Tross's
18 expertise or stipulate. So perhaps he could let us know if
19 he's willing to do that.

20 THE COURT: All right. What are you tendering
21 Dr. Tross as an expert in what field?

22 MS. SHAW: Your Honor, I'm offering her as an
23 expert in forensic psychology and specifically with regard
24 to sex offender evaluations and risk assessments.

25 THE COURT: All right. Mr. Falk, any challenges?

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1 MR. FALK: Can you all hear me, because I see a
2 lot of spinnings wheels here. Can you all hear me?

3 THE COURT: I can hear you, yes.

4 MR. FALK: I could just ask Dr. Tross just one
5 question.

6 THE COURT: Well, no. I need -- I mean, either
7 consent to her qualifications or else I'll make Ms. Shaw go
8 through the qualification process for the record.

9 MR. FALK: Your Honor, if I may, just to shortcut.

10 My only issue is that Dr. Tross is no longer with
11 DMH, I just want to know if she's being compensated to be
12 here today or if this is still as her carryover from her
13 employment with DMH.

14 MS. SHAW: Your Honor, I can answer that if Your
15 Honor doesn't want to have Dr. Tross sworn at this point
16 before we begin questioning.

17 THE COURT: Well, I guess my question is what does
18 that have to do with regarding her qualifications as an
19 expert in the field of forensic psychology and sexually
20 violent predator assessments. Either she's employed by the
21 State or ---

22 MR. FALK: You're right, Your Honor. You're
23 right. You're right. I'll stipulate.

24 THE COURT: All right. I find Dr. Tross qualified
25 as an expert in the field of forensic psychology and

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1 sexually violent predator assessment.

2 All right. Ms. Shaw.

3 MS. SHAW: Thank you, Your Honor.

4 THE COURT: Thank you.

5 MS. SHAW: And thank you Mr. Falk for your
6 courtesy.

7 DIRECT EXAMINATION

8 BY MS. SHAW:

9 Q. All right. Dr. Tross, can you hear me?

10 THE COURT: First, let me put her under oath.

11 All right. Dr. Tross do you swear or affirm to
12 tell the truth, the whole truth, and nothing but the truth?

13 THE WITNESS: I do.

14 THE COURT: Thank you very much.

15 ROZANNA TROSS, first being duly sworn
16 testified as follows:

17 THE COURT: All right. Ms. Shaw.

18 MS. SHAW: Thank you, Your Honor.

19 BY MS. SHAW:

20 Q. Dr. Tross, are you familiar with SVPT resident
21 John O. Johnson?

22 A. I am.

23 Q. And he's currently committed to the program,
24 correct?

25 A. Yes.

1 Q. And when was he initially admitted?

2 A. In July of 2008.

3 Q. Okay. And how are you familiar with him?

4 A. I met him actually last year while supervising one
5 of our fellows and conducting his annual review. And then I
6 was tasked with his 2020 evaluation, so I saw him again.

7 Q. So you've seen him on more than one occasion?

8 A. Yes.

9 Q. Okay. And the kind of evaluation you performed on
10 him for the most recent contact, that was an annual review
11 evaluation, correct?

12 A. Yes.

13 Q. Okay. And what is entailed in performing an
14 annual review?

15 A. Well, what we're looking at really is if there's
16 been a change in their abnormality or their mental
17 abnormality and/or personality disorder and how that relates
18 to a reduction in risk should they be released at this time.

19 Q. Okay. And just to clarify, what dates did you
20 meet with him?

21 A. I met with him in March of 2020 or attempted to
22 meet with him.

23 Q. Okay. Yeah. And what happened when you met with
24 him?

25 A. He declined to be interviewed. He was not in the

1 room very long. He initially -- he did come to the
2 interview room but he was only there a few minutes. When he
3 was asked if he wanted to participate, he said, Well, I'm
4 here. So we started going over the notifications so he
5 understood what his options were with an annual review. And
6 he said, You don't need me for that, and he walked out of
7 the room.

8 Q. And he has the right to refuse to participate,
9 correct?

10 A. Absolutely.

11 Q. Okay. But if he refuses to participate and
12 provide you with information you're limited to documenting,
13 correct?

14 A. That's correct. Information contained in the
15 record, information that we've had on him previously, yes.

16 Q. Okay. And so the review period that you reviewed
17 him for what was the specific time period?

18 A. January of 2019 to February of 2020.

19 Q. All right. Thank you. Now, since you weren't
20 able to interview him, what documents did you review in
21 preparation to write your report?

22 A. So we look at two different files of information.
23 One of which is their prior -- information, legal files,
24 containing everything prior to their admission to the SVPT.
25 So it has usually prior psychological evaluations, prior

1 commitment evaluations, or his original commitment papers.
2 It's going to have his official police report, sentencing
3 sheets, affidavits, indictments, it's going to have victim's
4 statements, investigative reports related to his various
5 crimes. It's going to have a copy of his national -- NCIC,
6 or his criminal record. It's going to have the petition
7 filed by the Attorney General's office related to why they
8 believed he might have been a sexually violent predator.
9 It's going to have his SCDC records in it to include
10 behavioral and/or treatment records.

11 Then we also looked at his records since he's been
12 here at the SVP, which is going to include all of his
13 treatment records as well as prior annual reviews.
14 Everything from individual contact, group contact, treatment
15 plans, as well as behavioral incident reports or behavioral
16 management committee findings and reports.

17 Collectively we look at all of that in prepping to
18 do an interview with the individual so we have a good
19 understand of why they're here, how they came to be here,
20 and really what their treatment has looked like over the
21 course of their time. And if they've changed, how, and in
22 what ways. If they haven't, maybe why not, and where they
23 might be stuck. We review all of that.

24 Q. Okay. And, in fact, was Mr. Johnson a voluntary
25 commit or was he committed by a jury?

1 A. He voluntarily committed.

2 Q. Okay. And in your experience is that common,
3 uncommon or something else?

4 A. A little bit of in between. We do see a lot of
5 guys voluntarily commit for different reasons, so it's not
6 unheard of.

7 Q. Okay. Now, after you did your records review, did
8 you feel the need to review any additional records or did
9 you feel you had sufficient information to render an
10 opinion?

11 A. Yes. I felt I had sufficient information.

12 Q. Okay. Now, please give us a brief recitation of
13 Mr. Johnson's personal history as it's relevant to your
14 assessment.

15 A. Well, consistent with what he's previously
16 reported, he comes from a somewhat -- he describes a normal
17 childhood, oldest of five children. He does describe his
18 father was an alcoholic. And indicated that he's been
19 verbally and emotionally abusive towards him and his
20 siblings. He reported leaving school in the eighth or ninth
21 grade because he wanted to work and earn money. He does
22 describe himself as a slow learner, but denied ever being
23 placed in special educational classes. He did say he
24 repeated the first grade, but denied subsequent academic
25 problems. He noted a few fights while in school, one of

1 which at least led to a suspension.

2 In a recent treatment assignment, he did say that
3 he was getting high every day, shoplifting, drinking, and
4 skipping school. So that's how he's more recently described
5 his academic involvement.

6 At the age of 19 he was incarcerated for his first
7 sexual offense and he spent the next 19 years in prison. He
8 was released in 2000, but was in and out of jail until 2004,
9 for his most recent offense. When in the community it looks
10 like he did work as a masonry. While incarcerated he did
11 get married and they had two children during conjugal
12 visits, but they only lived together for a few weeks when he
13 was released.

14 Q. But he was, in fact, charged with criminal
15 domestic violence after he moved in with his then wife?

16 A. Correct.

17 Q. Two weeks after he was released from prison?

18 A. Correct.

19 Q. Okay. And do you know the result of that charge?

20 A. He was convicted.

21 Q. Okay. Thank you. Please continue.

22 A. He has reported an extensive use and abuse of
23 substances since early adolescence. He said that his father
24 and several of his siblings abused alcohol as well. He
25 acknowledges substances have played a role in a lot of his

1 decision making and criminal behavior as well to include a
2 sexual offense. He has described being often under the
3 influence of drugs or alcohol while incarcerated. He does
4 note that his last use of substances was in 2004.

5 And then he has denied a history of psychiatric
6 problems or symptoms prior to incarceration and actually
7 prior to coming to the SVP. Since being at the SVP, his
8 annual reviews have not noted any sort of psychiatric
9 history for him aside from him going to the staff
10 psychiatrist and at times complaining of issues with
11 agitation and impulse control. He has been prescribed
12 medications at times. And it's our understanding that his
13 diagnosis of bipolar disorder is put in the record so that
14 he can be prescribed the medications, but not because he was
15 deemed to meet criteria for the disorder. And as such none
16 of the annual reviews have suggested that he has meets
17 criteria for a significant psychiatric diagnoses.

18 Q. Okay. And so are any of his personal factors
19 particularly relevant to his criminal and sexual offending
20 history?

21 A. Well, I guess all of them would be relevant in the
22 sense of understanding who he was in the community and what
23 contributed to the decisions he was making and the lifestyle
24 choices that he was living. In particular he meets criteria
25 for a personality disorder with antisocial traits. And so

1 his early lifestyle, his criminal behavior, his poor
2 interactions with others, his disregard for the impact of
3 his behavior on others, those are factors that we look at
4 when assigning the pensility disorder.

5 Q. Okay. Now, did he -- well, he has disclosed a
6 substantial substance abuse history. The records that you
7 had to review, what substances has he used? Or, actually,
8 I'll rephrase that.

9 Would he qualify for a diagnosis of poly-substance
10 dependence outside of a controlled environment?

11 A. No. And the reason not is simply because
12 poly-substance dependence refers to somebody who has
13 multiple substance abuse problems, but does not warrant full
14 criteria for a specific substance abuse disorder. He does
15 in fact meet full criteria for several substance abuse
16 disorders. So that's why he's given each of those
17 independent.

18 Q. Okay. And what are they?

19 A. Yes. He meets -- sorry, I'm just trying to find
20 it in my notes I apologize.

21 Hi acknowledges using and abusing Valium,
22 Clonopin, Xanax, cocaine while incarcerated. As a result he
23 meets full criteria for cocaine dependence, alcohol
24 dependence, and sedative anxiolytic dependence.

25 Q. Okay. And in his history, while incarcerated and

1 while released into the community, is there any
2 documentation in the record that he's received substance
3 abuse treatment?

4 A. No.

5 Q. Okay. Now, you heard Dr. Lockard testify
6 regarding his sex offending history, right?

7 A. Yes.

8 Q. And rather than belabor the record, is your
9 understanding of his offending history consistent with what
10 she reported?

11 A. Yes. In terms of the two different offenses, one
12 against a 17-year old the other against a 35-year old, yes.

13 Q. Okay. As well as the CDV conviction?

14 A. Correct.

15 Q. Okay. Now, we didn't -- when I was
16 cross-examining Dr. Lockard, we didn't go into a lot about
17 his nonsexual offending history. Do you have documentation
18 in your record regarding those charges?

19 A. Yes. We have his criminal records, his NCIC, as
20 well as police reports scattered in various evaluations that
21 indicate his different criminal convictions aside from his
22 sexual offenses.

23 Q. Okay. Can you go into a little bit of detail
24 about each of those convictions?

25 A. So he has approximately 16 different sentencing

1 occasions for criminal offenses. He has grand larceny,
2 criminal domestic violence, shoplifting, he as an open
3 container in a vehicle, public drunk, public disorderly
4 conduct, resisting arrest, he does have failure to register
5 as a sex offender, simple assault and battery, simple
6 assault, assault and battery of a high and aggravated
7 nature, simple possession of marijuana, and then assault and
8 battery with intent to kill.

9 We have his first conviction in January of 1980
10 with his last one being in May of 2003.

11 Q. Okay. And do you have any information about the
12 assault and battery with intent to kill? Like the factual
13 underpinning of that charge?

14 A. I don't believe so.

15 Q. Okay. And do you know when that was?

16 A. The way I have it listed in my report, I'm sorry,
17 I don't have a date for it.

18 Q. Okay. Now, in the current review period -- well,
19 actually describe his current treatment status from when you
20 first encountered him up until the most recent encounter.

21 A. In terms of what he's been doing, his compliance?

22 Q. Uh-huh. His compliance. Where he's at in the
23 program. Whether he's engaged, disengaged, done something
24 else.

25 A. Yeah. So last year he did withdraw from

1 treatments, and overall his group notes and treatment plans
2 reflect his participation has been minimal at best prior to
3 that decision to withdraw from treatment. So leading up to
4 his withdraw he's not considered overly active or really
5 progressing much.

6 He does -- when he attends group he doesn't offer
7 feedback or insight to others. He did present an assignment
8 in November 2018, related to his offenses, but the details
9 of that assignment were not discussed in the treatment
10 notes. So I don't know anymore than that he presented an
11 assignment.

12 He did begin decreasing his use of coping logs in
13 February of 2019, stating that he had nothing to write
14 about. This is important because they're asked to write two
15 a week to exemplify their ways of problem solving and coping
16 with daily life stressors or upsets and being able to
17 analyze their thought processes as they make those
18 decisions. So he took a step back from those saying he had
19 nothing to write about. He began voicing concern about
20 being offered a job that, in his opinion, didn't have enough
21 hours, so he declined to take the job because of the number
22 of days and hours it offered him.

23 He told his case manager he was considering
24 withdrawing from group and then requested information on how
25 that would impact him. He later told her he was angry and

1 upset and he could not look at the situation logically. He
2 told her he later did not want to withdraw from treatment,
3 that that decision would have been an example of poor
4 problem solving. But in April of 2019 he again was not very
5 active in treatment. He said he had a toothache and it was
6 infected. Notes stated he tended to catastrophize the
7 situation and exhibits distorted thinking about the motives
8 of others. He was contributing sinister intent to the
9 medical staff saying that they were sort of deliberately not
10 caring for him.

11 So he stopped attending group and he accumulated
12 over 17 absences. And then when he was in attendance he
13 didn't participate unless the facilitator prompted him or
14 directly asked him a question.

15 In July of 2019 he did officially withdraw from
16 treatment and that included in engaging his case management
17 sessions which they were doing weekly at that point.

18 In September of 2019 he was going to start meeting
19 with his case manager again, but that he did tell her he
20 didn't have any concerns or issues with which to discuss.

21 And in November of 2019 he told her he didn't
22 require case management and that he wanted to waive his
23 right to his upcoming annual review, meaning he did not want
24 to have an annual review. He told them, Please notify them
25 so I'm not written up for not showing up to the interview.

1 And then December of 2019 he expressed interest in
2 returning to group as he wanted to get back on track with
3 his treatment, somewhat acknowledging that he had been off
4 track the last year. He, at that time, did ask to be put in
5 a special needs track, but he said he didn't want to be
6 embarrassed to ask for help and that was his motivation for
7 wanting the special needs track.

8 He also told his case manager he only had a third
9 grade education, though that's inconsistent with prior
10 reports of his level of educating. But he was -- in January
11 2020 he was placed back in group, but he did say that he
12 wasn't working on any assignments, he hadn't started doing
13 any treatment work yet and he was not in a hurry to move
14 forward or phase up at this time.

15 Q. Okay. And would that be consistent with his prior
16 level of engagement of treatment over the years?

17 A. Yes.

18 Q. Okay. So nothing has changed in that respect at
19 least as of the time you evaluated him?

20 A. It doesn't appear to be so.

21 Q. Okay. He didn't have any behavioral infractions
22 during the current review period, right?

23 A. I believe he had been written up for contraband in
24 January of 2020.

25 Q. Okay. And do you know what contraband was that he

1 had in his possession?

2 A. I don't offhand.

3 Q. Okay. Prior to the 2020 review period, describe
4 his behavioral infractions and how often he has been either
5 written up or officially sanctioned by the behavioral
6 management committee?

7 A. Well, in his annual review, looking at the ones
8 from 2010 to 2016, he had significant, frequent disciplinary
9 actions or concerns regarding his aggression of assault and
10 threatening behaviors. By 2015 he had identified seven
11 specific residents with which he had assaulted -- physically
12 assaulted within the program. And at one point he had been
13 transferred out of the facility simply for stabilization for
14 several months. And then he was put on long-term secure
15 management status which is basically isolation, so he wanted
16 to be kept apart.

17 Q. Okay. And why would someone be placed on secure
18 management status?

19 A. It's a behavioral precaution. Every once in a
20 while that status is used for their own safety security, but
21 more often than not, they're placed on that status because
22 the resident themselves is out of control in some fashion
23 with safety and security, the orderly running of the
24 institution, or their aggression towards others.

25 Q. And do you have any direct information about why

1 he was placed in that status or is it just noted in the
2 records that that what was done?

3 A. His physical assaults on others.

4 Q. Okay. And since 2016 can you describe his
5 behavioral management -- well, I'll say, can you describe
6 how he's been behaving?

7 A. Yes. Since 2016, each annual review has noted a
8 significant decrease in the amount of assaultive behaviors
9 in terms of physical aggression. And he appears able to at
10 least be able to refrain from physically acting out. But
11 the notes do not reflect that he has a lot of insight into
12 why he was acting out or how he's able to manage himself.

13 Q. I'm sorry go ahead.

14 A. When upset he continues to verbally lash out. So
15 instead of physical, he's been verbally assaultive demeaning
16 towards others.

17 Q. Okay. So that was going to be my question. So
18 even though he's not physically assaulting people anymore,
19 he continues with the verbal acting out?

20 A. Yes. And attributing a sinister intent. And
21 that's what the current records are talking about, this
22 level of distorted thinking that he continues to exhibit.
23 Everyone is out to get him or they're deliberately doing
24 something to harm him or prevent him from having something
25 that he wants. It's just nefarious intent on the part of

1 others without facts or evidence to support it.

2 Q. Okay. Thank you. Now, since he reengaged in
3 treatment in January 2020 are you aware of whether he has
4 made any progress in terms of either leveling up or
5 completing additional treatment assignments?

6 A. The program has only recently started running
7 groups. So from his joining treatment from January 2020
8 they stopped running groups in April 2020, because of Covid
9 so he would have been individualized case management
10 approach. They started groups back up in November of 2020,
11 but to my knowledge he has not phased up, he's stayed where
12 he started.

13 Q. Okay. And has he had any successes while he's
14 been in the program aside from reducing his assaultive
15 behaviors?

16 A. Those are his biggest successes.

17 Q. Okay.

18 A. It's simply being able to refrain from physically
19 acting out when upset and sort of resorting to, you know, at
20 least a verbal tirade rather than a physical one.

21 Q. Okay. But he hasn't made any sort of progress in
22 terms of modifying his dynamic risk factors or gaining
23 insight into the reasons he offended or anything like that,
24 or has he?

25 A. Well, not really. In his treatment goals on his

1 treatment plans from year to year are fairly consistent and
2 similar to what they were in the past. His progress is
3 regressing or minimal at times. There's moments where they
4 say that he's progressing, but his assignments, the few that
5 he has done, contained very little information.

6 When he has discussions with case managers or
7 others about his offending, continues to be vague in terms
8 of accepting responsibility or acknowledging his role. He
9 still maintains that his second offense was consensual
10 activity.

11 Q. His second sex offense?

12 A. Correct.

13 Q. Okay. So it's been discussed that Mr. Johnson has
14 reported himself as being slow or a slow learner. In your
15 opinion has this affected his ability to retain and
16 implement information that's provided to him?

17 A. No. Not at all.

18 Q. Okay. So he is capable of understanding the
19 material and the routine, correct?

20 A. Correct. The material itself is very low level,
21 if you will. They do a lot of matching, they do a lot of
22 definitions, they do a lot of fill-in-the-blank type work,
23 even in a regular track. The assignments are templates that
24 they fill in, if you will. They make a lot of
25 accommodations for individuals who struggle with writing,

1 sometimes they can get an assistant. They allow them to
2 orally present in the group rather than writing something
3 down if that becomes their difficulty. And they are
4 assessed by the treatment team to determine whether or not
5 they need a special needs track and the level of
6 accommodations.

7 Q. Okay. And Mr. Johnson has been provided with the
8 accommodations that would be reasonable given his reported
9 intellectual deficits?

10 A. Yes.

11 Q. Okay. Now, as part of your evaluation you
12 conducted a records review and were unable to conduct an
13 interview. Did you perform a risk assessment in addition?

14 A. Yes.

15 Q. And what is entailed in a risk assessment?

16 A. So really what we do in terms of a risk assessment
17 is it looks at four factors. I always describe it like a
18 pie cut up into four pieces. One section is really an
19 assessment of what their mental abnormality is and the role
20 that that plays in their offending patterns their decision
21 making, et cetera.

22 Another section is static risk factors, things
23 that the research has specifically studied and found to
24 predictive of increased rates of sexual recidivism.

25 A third factor is dynamic risk factors. That,

1 again, is predicated on the research and studies that have
2 specifically targeted certain factors that they have found
3 to increase sexual recidivism rates.

4 And the last factor is protective factors. What
5 things they might have in place or have learned through
6 treatment that could help mitigate their risk if in the
7 community. So our risk assessments are inclusive of an
8 analysis of those four areas.

9 Q. Okay. Great. Then let's start with the first
10 area. What, if any, diagnoses does he have?

11 A. Yes. In addition to the several substance abuse
12 disorders diagnoses, he has other specified personality
13 disorder with antisocial traits.

14 Q. Okay. And describe what that is and what it
15 means.

16 A. So personality disorders themselves, that's the
17 first threshold he has to meet criteria for to get other
18 specified, right. So these are enduring patterns of
19 inter-experience and behavior that deviate markedly from the
20 norms and expectations and cultural behaviors of others,
21 right. It impacts at least two areas of four, such as
22 either their thinking, their affectivity, their
23 interpersonal relationships, and/or their impulse control.

24 And so when we see something that is pervasive and
25 consistent across multiple settings when there is impairment

1 in at least two of those areas, that's when we know it's a
2 personality disorder, it's engrained it's character logical,
3 it's not caused by something else. So that's the foundation
4 for why he meets the definition of a personality disorder.

5 And then, in particular, we look at what type of
6 personality disorder is it. In his case, it's antisocial
7 personality disorder, which is characterized by a pervasive
8 disregard for the rights and welfare of others, a lack of
9 concern for how his behavior impacts others, a lot of
10 irritability and aggression, deceitfulness, callousness,
11 lack of remorse, et cetera. As well as repeated criminal
12 behavior or behavior that can be grounds for arrest if it
13 was detected.

14 In his case he's not given the full diagnosis of
15 antisocial personality disorder because we simply lack
16 linforamtion about his early adolescence and childhood.

17 Q. And is that a prerequisite like early conduct
18 disorder is a prerequisite to assigning antisocial?

19 A. Yes, ma'am. And in his case that's the only thing
20 missing which is why he doesn't have that diagnosis by
21 itself.

22 Q. But if there additional information available to
23 you that would indicate the conduct disorder when he was a
24 teenager or a youth, you might modify your diagnosis?

25 A. Correct.

1 Q. Okay. And has the diagnosis of other specified
2 personality disorder with antisocial traits been consistent
3 over time for Mr. Johnson?

4 A. It has.

5 Q. Okay. So that hasn't changed?

6 A. No.

7 Q. And a personality disorder is a chronic condition,
8 correct?

9 A. They are.

10 Q. Okay. Can you please tell us a little bit about
11 why and what a chronic condition of this nature would do for
12 an individual?

13 A. Yes. They are chronic because personality
14 disorders themselves begin in early adolescence, late
15 adolescence, and early adulthood. They're seen across
16 multiple settings. So they're not unique to at-home
17 behavior. Meaning, they're not just a product of a home
18 environment dysfunction. They're not seen just a school
19 setting. They're not seen in just a work environment for
20 somebody because they don't like that particular boss. We
21 see it in multiple settings and it's pervasive and they're
22 inflexible.

23 Their distorted thinking processes or their
24 difficulties in interpersonal relationships are long term,
25 they're not unique to a specific set of circumstances. And

1 so that chronic nature of a personality disorder happens
2 simply because this is how they come to the table and have
3 operated since early adolescence or early adulthood and they
4 have continued to engage in that.

5 What we do see is some personality disorders
6 simply abate a little bit with time. And antisocial is one
7 of those that can, in fact, change and typically where we
8 see the change is in criminal behavior and substance abuse.

9 Q. And typically that occurs around age 40, right?

10 A. It can start to happen in their 40th year. When
11 somebody is exclusively incarcerated as a result of that
12 time, it's really hard to pinpoint that there's been an
13 abatement versus a prevention if that makes sense.

14 Q. Uh-huh.

15 A. So in that regard we would still say that we have
16 a chronic personality disorder but it is possible that some
17 of those things could start to abate.

18 Q. In Mr. Johnson's case have you observed anything
19 in the records that you were able to review that would
20 indicate that his personality disorder is in fact improving
21 or abating?

22 A. I think what we are seeing is simple impulse
23 control is starting to kind of mellow out. And I think the
24 evidence of that is the lack of physical assaults on others
25 and he's less likely to go there, if that makes sense, even

1 though it can be a similar circumstance that would provoke
2 that reaction five years ago, seems to not be provoking that
3 same reaction now.

4 Q. Okay. And with respect to the other behaviors
5 that go along with this personality disorder, not including
6 the physically assaultive behaviors, have you noticed any
7 sort of abatement and improvement of symptoms over time?

8 A. Not really.

9 Q. Okay. Now, that we've established that, please
10 tell us about what the static and dynamic risk factors are.

11 A. Yes. So static factors are, again, specifically
12 researched and empirically supported to increase the rate of
13 sexual recidivism. They're called static simply because
14 they're historical based on facts that can't change and so
15 they're one piece of that risk assessment.

16 Whereas, dynamic is something changeable, which
17 becomes what treatment is founded on and what treatment
18 tries to intervene and address, because they can learn to
19 manage those things differently. And those can have a
20 direct impact on their reduction and risk.

21 Q. Okay. And if an offender, in particular, makes
22 improvements with dynamic risk factors, that in fact could
23 be a basis for you to recommend them that they have changed
24 and can be safe to be released, correct?

25 A. Absolutely.

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1 Q. Okay. And you have done so in the past, right?

2 A. Oh, yes.

3 Q. Okay. Now, so what were the scores that
4 Mr. Johnson got on the Static 99 and 2002R?

5 A. So the 99R he received a seven and the 2002R he
6 received a six, both of which put him in the above
7 average -- well, one the well above average risk category,
8 the other above average risk category.

9 Q. Okay. Now, your report and your conclusions on
10 the Static 99R are different than Dr. Baez-Lockard's. She
11 scored him a six on that and you scored him a seven. Can
12 you explain the discrepancy or do you have any information
13 which would help explain why she scored him lower than you
14 did?

15 A. That I don't. I have no idea what her score is
16 predicated on. I know my score is similar to the score that
17 was reported last year as well in his annual review. And,
18 again, we have the official records, the NCIC, as well as
19 his police reports and stuff. And, collectively, you know,
20 with the ten different areas that we're looking at, so I
21 don't know where Dr. Lockard and I differ.

22 Q. Okay. But he has scored consistently a seven on
23 the 99R over time, right?

24 A. The last two years, yes. He's -- I will say that
25 a difference of one point is statically acceptable with the

1 static, it's usually a plus or minus one.

2 Q. Okay. So it's not entirely dispositive of an
3 issue and it's possible that she could have scored
4 incorrectly, but just applied different factors, but at that
5 end of the day, both of the statics are well above average
6 or above average, right?

7 A. Well, that's true. The scores do put him in
8 pretty much the same category of well above average risk --
9 I'm sorry, above average risk, mine just puts him in the
10 well above. But, again, I don't know where our scores
11 differ to know whether it's in error or if there's a piece
12 of information I know that she didn't or vice versa.

13 Q. Okay. And the other question is you testified that
14 you reviewed the NCIC report for Mr. Johnson, and
15 Dr. Baez-Lockard testified that she did not. Does that have
16 any relevance to creating a static score?

17 A. Absolutely. The static manual and the trainers
18 emphasize the need for the NCIC to be able to score the
19 statics.

20 Q. Okay. So without that NCIC report, you don't have
21 all the pieces of the puzzle required to make an accurate
22 score, correct?

23 A. That's true.

24 Q. Okay. Thank you.

25 Now, in the categories that Mr. Johnson was placed

1 in regarding the actual percentage risk for recidivism, what
2 is that?

3 A. On the 99R, he's going to equate to a five-year
4 estimated recidivism rate 27.2.

5 Q. And on the 2002R?

6 A. A 19.2.

7 Q. Okay. And these instruments only take into
8 account in terms of recidivism rate, they only take into
9 account detected and charged offenses, right? And
10 convictions?

11 A. Correct.

12 Q. They do not take into account undetected offenses?

13 A. Correct.

14 Q. They do not take into account uncharged or
15 unconvicted offenses?

16 A. Correct.

17 Q. So in reality, if an offender were to be released
18 and not undetected, that would be for five years, so his
19 risk could be underestimated by this instrument; is that
20 correct?

21 A. Correct.

22 Q. Okay. Are they generally considered reliable
23 tests in your field of expertise and used routinely in these
24 types of evaluations?

25 A. Yes.

1 Q. Okay. Great. And in terms of the dynamic risk
2 factors, you identified a number of them for Mr. Johnson.
3 Could you please tell us what those are?

4 A. Yes. So I specifically highlighted nine, which
5 is, again, consistent with his prior annual reviews. Lack
6 of emotionally intimate relationships with adults, lifestyle
7 impulsiveness, resistance to rules and supervision, poor
8 problem solving, grievance hostility, negative social
9 influences, hostility toward women, a callous lack of
10 concern for others and dysfunctional coping.

11 Q. Okay. And Dr. Baez-Lockard actually identified
12 three of your nine as continuing issues for Mr. Johnson,
13 right?

14 A. I believe so.

15 Q. Okay. Actually, let's back up for just one
16 moment. Can you tell us how many dynamic risk factors that
17 are empirically supported?

18 A. There are 16 total, 12 of them have more than one
19 meta-analysis that supports the direct link, whereas the
20 other four have one study. So that's the difference between
21 the two.

22 Q. So the other four are correlated and there are 12
23 that are empirically supported?

24 A. Correct.

25 Q. Okay. So these nine dynamic risk factors that

1 you've previously identified, can you please go through them
2 one by one and tell us how they apply to Mr. Johnson and how
3 they are likely to effect his risk to recidivate.

4 A. Well, the risk to recidivate is that the majority
5 of them are inherent in his personality disorder and his
6 antisocial disposition. His thought processes, his
7 impulsivity, his inability to connect with others on an
8 emotionally intimate level, those are aspects of his
9 personality disorder that we very much see, which is why
10 these are such significant risk factors for him and then of
11 course become his failure of focus for treatment.

12 By addressing those specifically, and increasing
13 his skills in those areas, he's going to decrease and help
14 manage that risk better. So that's why they're significant
15 in terms of risk.

16 The lack of emotionally intimate relationships
17 with others is that he never had a long-term relationship or
18 commitment with others. He has a limited history of
19 pro-social relationships with adults and he's had continued
20 difficulty developing those relationships while incarcerated
21 and since being at the SVP.

22 And, again, what we've seen is, since 2016, we're
23 seeing at least an abatement of physical aggression toward
24 others. But we haven't, or what I do not see in the record,
25 is the deliberate addressing of trying to develop skills so

1 that he can communicate effectively with others, so that he
2 can problem solve when there's a disagreement or upset, or
3 an ability to establish a friendship that isn't
4 instrumentally manipulative of someone else.

5 You know, we kind of collude on contraband so we
6 can violate the rules. I mean, that would be an example of
7 an unhealthy relationship, or becoming friends to use each
8 other for a mutually beneficial gain. That's not the same
9 thing as developing a healthy emotionally intimate
10 connection with somebody else. So the treatment record is
11 absent work in that area which is why it remains a risk
12 factor for him.

13 Q. Okay. And actually regarding that particular risk
14 factor, you noted that Dr. Baez-Lockard performed the MMPI
15 on Mr. Johnson and you heard the testimony regarding the
16 conclusions.

17 Do those conclusions actually support your opinion
18 that Mr. Johnson is going to have significant trouble with
19 this particular risk factor if he were to be released and
20 continuing to exhibit significant trouble with it?

21 A. Well, what it exemplifies is that, again, his
22 personality disorder is chronic and lifelong and may
23 continue to exemplify difficulties with his thinking and
24 ability to interact with others in a way that's consistent
25 with his personality disorder.

1 Q. Okay. Thank you. Please go into his other
2 dynamic risk factors and how they apply to his present risk.

3 A. So the next one is lifestyle impulsiveness. He
4 has an extensive history of low self control and
5 irresponsible decisions. Namely, that is exemplified by his
6 chronic criminal behavior, his chronic substance abuse, and
7 his various institutional infractions.

8 You know, his impulsivity is now more directed,
9 his verbal lashing out, deciding to withdraw from treatment,
10 dismissing relevant things for him: I don't need to do
11 coping logs, I don't need to attend group, I don't even need
12 to come to my annual review interview, without having sort
13 of a well thought out plan or reason. He doesn't have
14 significant discharge plans. Even his treatment plan, I
15 think, said that he has not put forth much effort into
16 preparing himself for discharge.

17 So, again, these are all examples of how he
18 doesn't have long-term thought processes about living.
19 Chronic instability in employment. You know, again, he
20 worked in masonry in the community, but he was never in the
21 community long enough because of criminal activity. He has
22 a lack of meaningful daily routines, his irresponsible
23 decisions, and a lack of long-term realistic goals.
24 Collectively, those things represent that lifestyle
25 impulsiveness dynamic risk factor.

1 And, again, what we don't see -- because I think
2 impulsivity can sometimes be misunderstood, just because
3 he's not jumping out of his chair or yelling randomly on the
4 unit or getting into fights doesn't mean he has impulse
5 control. Because we don't see evidence of control in his
6 ability to make decisions clearly and have logical,
7 rational, understanding of why he's making the decisions he
8 is.

9 And, again, we don't have the substance abuse at
10 the moment, but we have, you know, a criminally-minded
11 individual who we still have evidence of breaking the rules
12 by engaging in contraband and things like that. So, as a
13 result, we have evidence of continued ways that lifestyle
14 impulsivity that plays itself out for him.

15 Q. Okay. There's a cluster of dynamic risk factors
16 which would include grievance, hostility, callousness, and
17 lack of concern, as well as hostility toward women. Can you
18 talk about those factors and how they apply to Mr. Johnson?

19 A. Right. He often believes he's been unjustly
20 punished or that he's being targeted or that he's feedback
21 during -- perseverates on the wrongs of others and those are
22 examples of grievance hostility. You know, it's me against
23 them type of mentality.

24 Q. So he's consistently demonstrated that over time,
25 right?

1 A. Yes.

2 Q. Okay. That has not decreased?

3 A. Correct. It's also a way of putting
4 responsibility on others for his own circumstance. And that
5 could whether it's, you know, a behavioral infraction
6 whether it's a loss of level, or whether it's a loss of
7 restriction of some kind to his actual offending itself.
8 Often, you know, preoccupied with themes of getting respect
9 they feel they deserve from others. We've seen that very
10 much with him in the past. So in some regard that seems to
11 have lessened.

12 The callousness is a tendency to engage in, again,
13 instrumental rather than effectively warm relationships,
14 lack or empathy for support from others. Expressing sorrow
15 for having been caught, arrested, convicted, or even being
16 imprisoned for 30 years away from your family is not the
17 same thing as true remorse or empathy for the actions you've
18 engaged in towards others. I mean, we have a long history
19 of criminal behavior, repeated criminal behavior. You know,
20 to gain money, to gain substances, to violence towards
21 others to solve problems as well as to fulfill his own
22 sexual gratification.

23 The treatment record does not support that he has
24 understood the level of harm his various actions have had on
25 others, nor that he truly accepts responsibility for that,

1 aside from, you know, I shouldn't have done that and I'm
2 sorry for having done that.

3 Q. Okay. And you heard Dr. Baez-Lockard's testimony
4 regarding what Mr. Johnson actually said to her, correct?

5 A. Yes.

6 Q. And in your opinion do those statements amount to
7 a fundamental change in particular issues for Mr. Johnson or
8 do you think that that's a mere self-serving statement?

9 A. I don't think those statements are indicative of
10 any change because the record itself over the last several
11 years does not reflect that we've seen an increase in his
12 analyzing, his thinking and coping logs, or the treatment
13 assignments, or even group discussions that reflect a true
14 change in how he thinks or feels about his actions.

15 Especially last year he's dismissed the idea of
16 even needing treatment or moving forward or knowing that
17 he's going to be here a while because he hasn't done much.
18 Even when faced with complex problems he's not using his
19 case manager to work through them or to express genuine
20 understanding of how he might be at fault or that there
21 could have been a more positive way to solve a problem.
22 He's just -- when he needs it seems to just be to vent
23 frustration.

24 So saying it in an isolated interview under one
25 circumstance is not the same thing as the treatment record

1 reflecting that true understanding and knowledge and we're
2 not seeing it trickle down into the other treatment
3 opportunities he has to demonstrate that change.

4 Q. Okay. And lastly with regard to dynamic risk
5 factors, he's noted to have poor problem solving, negative
6 social influences and dysfunctional coping. Can you please
7 describe, briefly, what those risk factors entail and how
8 they increase or do not increase his likelihood to
9 recidivate?

10 A. So dysfunctional coping, he has a long standing
11 history of maladaptive coping with negative emotions.
12 Meaning, he gets upset he lashes out, in the past very
13 physically, now verbally where he can be degrading and
14 abusive towards others. We've seen that in his criminal
15 history especially as it relates to anger. He tends to
16 respond reckless and in an impulsive manner when faced with
17 stress. And, again, in a sterile environment where a lot of
18 that stress is controlled or removed from you, you're likely
19 not to see that as much. But the few times we do see him
20 get stressed and frustrated this is really where we see
21 those maladaptive ways of coping come out which is, again,
22 still a risk factor for him.

23 Negative social influences is a very similar
24 thing. The lifestyle that he chose to engage in, which of
25 course is exacerbated by his own substance abuse, but

1 contented criminal activity, meaning these are the
2 individuals he's choosing to associate with in the community
3 and a lot of that has remained unchanged since being in the
4 program. In a sense that, when he violates rules, it's with
5 others that engage in these rule breaking behaviors with
6 him. Without really talking in treatment about his need to
7 detach himself from that criminal way of thinking and
8 behaving.

9 And appreciating, you know, living in a community
10 and part of relapse prevention is going to be implementing
11 rules and regulations for himself that allow him to be safe
12 and successful and remove himself from that type of behavior
13 or mindset and those associates. His treatment plan does
14 not reflect that he has not actually even gotten to that
15 level realizing that he himself has to make some of these
16 sustained changes.

17 Q. Okay. Thank you. Now, just briefly,
18 Dr. Baez-Lockard administered the HARE Psychopathy Inventory
19 as well as the MMPI, you did not. Why didn't you administer
20 these two tests?

21 A. There was no need, so that's one. Two, his
22 personality disorder and the traits therein have been
23 consistently documented as well as seen when interacting
24 with him. So there's no need for a test to validate that he
25 has a personality disorder. We know he has one. The HARE,

1 the PCLR, is a test that really should be used in very, very
2 specific circumstances. It shouldn't be part of a standard
3 battery, because of the potential for it to be misused. The
4 label of psychopathy is extremely pejorative and damaging to
5 an individual who doesn't have psychopathy.

6 And for Mr. Johnson there's no indication that he
7 has psychopathic traits aside from just his personality
8 disorder, so there's no need to administer it.

9 Q. Okay. And contrary to Dr. Baez-Lockard testimony
10 at the beginning on direct, the psychopathy checklist does
11 not, in fact, test for an antisocial personality disorder,
12 it solely deals with psychopathic, right?

13 A. Correct. It only assesses the clinical concept of
14 psychopathy, nothing else.

15 Q. Okay. Thank you. Now, you and Dr. Baez-Lockard
16 came to the same conclusion regarding Mr. Johnson's
17 personality disorder, correct?

18 A. Yes.

19 Q. Okay. And you both identified three dynamic risk
20 factors that are currently active for him? She identified,
21 I believe, three more which she believes are not currently
22 active. Do you believe these conclusions are correct?

23 A. No.

24 Q. Okay. And do you believe that Mr. Johnson
25 requires continued inpatient treatment in order to manage

1 his personality disorder?

2 A. Yes.

3 Q. Okay. If he were to be released into the
4 community at this time, would there be any mechanisms in
5 place that would be protective factors of which you have
6 been able to confirm their existence which would guarantee
7 that he engages in substance abuse treatment as well as sex
8 offender treatment?

9 A. It's a two-part answer, can I do that?

10 Q. Of course.

11 A. So with the first part there isn't anything
12 mandating that he would have to comply or engage, use his
13 discharge plan, if you will, or release plan. He's out of
14 the program, he is free.

15 In terms of actual protective factors, the
16 treatment records are pretty consistent in noting that he
17 has not had family contact for several years. So while I
18 know he's telling Dr. Lockard that he has contact with his
19 family, that could be recent for him. But as of my
20 interview or attempted interview of him and review of the
21 information, the treatment records noted that he has not had
22 contact with them for several years.

23 Q. Okay. So his reported of community and family
24 supports, for all everyone knows, based on the records,
25 don't exist?

1 A. Correct.

2 Q. Okay. Or do they exist, if you know?

3 A. I don't know.

4 Q. Okay. Now, did you come to any conclusions in
5 your review about whether Mr. Johnson presents a continued
6 risk of re-offense?

7 A. Yes.

8 Q. And what was that conclusion?

9 A. Ultimately, that he has not yet addressed his
10 mental abnormality or personality disorder, which is his
11 antisocial, right. He's not yet made progress and treatment
12 over the past year, nor made improvements in his ability to
13 effectively problem solve, manage his emotional upsets,
14 demonstrate adequate or prosocial coping skills, challenge
15 his distorted thinking, manage criminal thinking, or manage
16 his cantankerous disposition. So that seems to be
17 consistent in all the treatment documents available.

18 So he continues to exhibit significant
19 interpersonal difficulties, distorted thinking, affective
20 instability and impulse control which are the foundation of
21 his personality disorder. Therefore, his mental abnormality
22 has not changed.

23 Q. Okay. Now, as part of your evaluation you've
24 produced your report, which we have been referring to --
25 it's dated March 27th, 2020, right?

ROZANNA TROSS - DIRECT BY MS. SHAW

1 A. Yes.

2 Q. Did you produce this report in the course of your
3 employment with DMH?

4 A. Yes.

5 Q. And did you produce it as part of your ordinary
6 duties with DMH?

7 A. Yes.

8 Q. Are these types of documents routinely created in
9 the ordinary course of business and kept by DMH as records
10 regarding these residents?

11 A. Yes.

12 Q. Okay. And is the use of a record review, the
13 interview if the resident is willing to participate, as well
14 as the risk assessment using the actuarial instruments and
15 the other key factors, is that standard practice in your
16 field of expertise in conducting these evaluations?

17 A. It is.

18 Q. Okay.

19 MS. SHAW: Your Honor, at this point in time I

20 would request that Dr. Tross's report dated March 27th,

21 2020, be admitted under South Carolina Rule of Evidence

22 803(b), I believe, 4 and 6, as a business record and

23 state -- not his statements before this medical diagnosis

24 because he didn't participate.

25 THE COURT: I'm ---

1 MS. SHAW: But 803(6), I would request that it be
2 admitted as State's 1.

3 THE COURT: I mean, I don't -- I don't have it.

4 MS. SHAW: Your Honor, doesn't have the report?

5 THE COURT: Well, I mean, which report are you
6 talking about?

7 MS. SHAW: This is Dr. Tross's March 27, 2020
8 Annual Review Report. That would have been served on the
9 Clerk and I believe mailed to Your Honor.

10 THE COURT: Okay. So that's -- I mean, I've got a
11 report in the Clerk of Court file.

12 MS. SHAW: Your Honor, I'm more than happy to
13 email a copy of the report to your clerk so it can be
14 marked.

15 THE COURT: I mean, I've got a -- I've got a
16 report -- the one signed by Dr. Tross on March 27th, 2020.

17 MS. SHAW: That's the one, Your Honor.

18 THE COURT: Okay. It's contained in this file,
19 but how do we make it an Exhibit? It's filed with the Clerk
20 of Court.

21 MS. SHAW: Well, Your Honor. I would ask that it
22 be entered. And I'll be more than happy to email a copy of
23 it so that it can be properly marked and entered into the
24 record.

25 THE COURT: All right. Mr. Falk, any objection?

ROZANNA TROSS - DIRECT BY MS. SHAW

1 MR. FALK: No objection.

2 THE COURT: All right. I'll allow it. You're
3 going to need to send it to the Court Reporter and we'll
4 mark that as State's Exhibit 1.

5 (WHEREUPON, State's Exhibit Number 1 marked and
6 entered for the record.)

7 MS. SHAW: Thank you, Your Honor. I'll send that
8 with the other documents Your Honor requested earlier.

9 THE COURT: All right. Thank you.

10 BY MS. SHAW:

11 Q. All right. And Dr. Tross, all of your conclusions
12 that you've testified to today, are you -- did you make them
13 to a reasonable degree of psychological certainty?

14 A. Yes.

15 Q. Okay.

16 MS. SHAW: Your Honor, I have additional testimony
17 that I can offer and would like to offer from Dr. Tross, if
18 the Court will allow it, regarding concerns of
19 Dr. Baez-Lockard's competency. Is the Court inclined to
20 hear the testimony?

21 THE COURT: Not if it's pitting one witness
22 against another witness, no.

23 MS. SHAW: All right. Then I will reserve with
24 a -- I will not offer the testimony at this time, Your
25 Honor.

1 THE COURT: Okay. All right. Before we -- are
2 you through with your Direct Examination?

3 MS. SHAW: Yes, Your Honor.

4 THE COURT: All right. Before we get into
5 Cross-Examination, let's take about a ten-minute break, and
6 then we'll come back and resume. Okay?

7 MS. SHAW: Thank you, Your Honor.

8 MR. FALK: Thank you, Your Honor.

9 THE COURT: Thank you.

10 (WHEREUPON, a break was held from 3:55 p.m. until
11 4:10 p.m.)

12 THE COURT: All right. Are we ready to resume?

13 MR. FALK: Yes, Your Honor.

14 THE COURT: All right. Mr. Falk,
15 cross-examination.

16 CROSS-EXAMINATION

17 BY MR. FALK:

18 Q. Dr. Tross, he declined to participate -- you did
19 this interview on 3/27/20; is that correct?

20 A. Well, in March, it actually would have been the
21 week before.

22 Q. Okay. But he declined to participate in the
23 interview at that time; is that correct?

24 A. He did.

25 Q. And you also attempted to interview him where you

1 generated a report January 2nd, 2019; is that correct?

2 A. That was Dr. Laxton's report, but I supervised it.

3 Q. Okay. So who is Dr. Laxton?

4 A. So at my time at DMH, I am the fellowship training
5 director, and we had two psychology fellows, Dr. Laxton is
6 one of them. And I was supervising them on doing annual
7 review reports, and Mr. Johnson's case is one that she would
8 have done. And given the date of it, she would have been
9 doing toward the end of the rotation, meaning, she would
10 have interviewed him solo. But we would have discussed his
11 case prior to her evaluation, after her attempted interview
12 and during the writeup, and then I would supervise and
13 review the report with her and then cosign it.

14 Q. Oh, so you didn't take part in that interview?

15 A. That's correct.

16 Q. Okay. Mr. Johnson has fully cooperated at other
17 times with his annual review; is that correct?

18 A. Prior to the last couple of years, yes.

19 Q. Has he cooperated with Dr. Schwan (ph) for her
20 report that she generated January 23, 2018?

21 A. Yes, he's participated in the past, yes.

22 Q. Okay. And he participated with Dr. Brown in the
23 report generated in 2017; is that correct?

24 A. I don't have his report in front of me, but I will
25 take your word for it.

1 Q. Okay. He has had -- the diagnoses for Mr. Johnson
2 have fluctuated throughout his time at the treatment
3 program; is that correct?

4 A. I don't believe so. He's consistently been
5 diagnosed with personality disorders and substance abuse
6 disorders, which are the ones I've opined he had. Are you
7 referring to a different --

8 Q. Did you get an opportunity to review Dr. Schwan's
9 evaluations, the two that you did I guess that would be 2016
10 and 2018?

11 A. Yes, I would have reviewed them, I don't recall
12 them offhand.

13 Q. Okay. She diagnosed him as having a paraphilic
14 disorder. So there has been some fluctuation in the
15 diagnoses; is that correct?

16 A. There can be a difference of opinion. I don't
17 know that that's the same thing as a fluctuation. They
18 don't ebb and flow. It's my opinion he doesn't meet
19 criteria paraphilic disorder, nor has he.

20 Q. Okay. So it is just a question of opinion.
21 There's no real strict objective criteria that you were
22 following; is that correct?

23 A. Oh, there absolutely is. The diagnostic criteria
24 is very clear. He either meets criteria or he doesn't.
25 And, in fact, last year's report also did not opinion that

1 he met criteria for a paraphilic disorder. His sexual
2 offending is just an extension is his antisocial
3 disposition, I want something, I'm going to go get it. I'm
4 sexually aroused, I'm going to go rape. And by his own
5 account, the few times that he talked about his offenses,
6 that's exactly what he did. Him and his codefendant saw a
7 girl standing in a parking lot loading the trunk of her car,
8 decided they wanted her. They went and grabbed her, put her
9 in the trunk, and then raped her repeatedly over several
10 hours. He acknowledges the same thing with the 35-year-old
11 woman that he doesn't know, I wanted sex, I asked her -- in
12 his version, he asked her for it, and engages in sexual
13 activity. Her report is that he raped her on two different
14 occasions and then made her masturbate -- made her
15 masturbate him. Yes, that's the official account. But in
16 both of those sexual offenses this is somebody who decided
17 he wanted sexual activity and went and got it.

18 There's no indication that he was aroused by the
19 specific nature of the behavior that drove him to have
20 sexual interest or preference for a coercive-type of sexual
21 encounter. There's nothing about their ages or descriptions
22 that would suggest that this was paraphilic interest of some
23 sort that was above and beyond his normal sexual interest.

24 So as a result I opined that he does not meet
25 criteria for that disorder based on verry strict diagnostic

1 categories of what those disorders are. So it's not just
2 opinion or an arbitrary argument.

3 Q. Well, there must be some opinion base as to how
4 somebody fits particular categories for two experts to
5 arrive at two different diagnoses; am I correct?

6 A. Yes and no. Somebody could look at the exact same
7 facts and decide that because somebody committed a violent
8 rape that is evidence in and of itself of a paraphilic
9 disorder. But in my professional opinion, that's incorrect.
10 And there is research to support that's also incorrect. The
11 mere fact of committing a sexual crime does not make it a
12 paraphilic interest and nonsexual or nonconsensual behavior.
13 All sex crimes are nonconsensual, that's what makes them sex
14 crimes and against the law. The victim is always
15 nonconsensual. Sometimes their not violently nonconsensual,
16 but they are nonetheless not agreeing to consent in illegal
17 behavior.

18 MS. SHAW: Your Honor, I'd like to object to this
19 line of questioning. There is no dispute between
20 Dr. Lockard and Dr. Tross that Mr. Johnson in fact suffers
21 from other specified personality disorder with antisocial
22 features. They both diagnosed him with that. So I'm not
23 sure what the relevance of Dr. Schwan's 2016 evaluation
24 diagnosis of him with paraphilia. I don't know how that
25 would be relevant to today's inquiry if Mr. Johnson has

1 shown probable cause to believe his status has changed.

2 THE COURT: All right. Mr. Falk, what's the
3 relevancy?

4 MR. FALK: I think there's some relevancy just
5 pointing out the fact that two qualified experts can reach a
6 different conclusion by looking at the same facts.

7 THE COURT: Well, I understand that. But as I
8 understand in this case your client -- both Dr. Lockard and
9 Dr. Tross diagnosed him -- says that he has a personality
10 disorder with antisocial personality disorder. And the
11 question is: Has that condition so changed that he is no
12 longer a threat or subject to reoffend?

13 The paraphilic diagnoses, if it's not -- if
14 neither one of them have diagnosed that he ever suffered --
15 had that -- I mean, I guess my argument is, are you saying
16 that he did have that diagnoses and now he has so improved
17 that he doesn't have that diagnosis again?

18 MR. FALK: No. What I'm saying is there's a
19 difference of opinion between two experts in this case as to
20 whether or not my client meets the definition for a sexually
21 violent predator, or whether or not his condition has so
22 changed. And I was just highlighting the fact that in this
23 field you can have two experts reach two different
24 conclusions.

25 THE COURT: Okay. I think I can take judicial

1 notice that you can have experts reaching different
2 conclusions.

3 MR. FALK: Okay.

4 THE COURT: All right. Go ahead.

5 MR. FALK: Thank you.

6 BY MR. FALK:

7 Q. There was a lot of discussion under direct
8 examination of the fact that Mr. Johnson has a high static
9 score. Is that -- do you acknowledge that?

10 A. That he has a high static score? Yes, sir.

11 Q. But a high static score would not preclude
12 somebody from being released from a program; is that
13 correct?

14 A. Correct.

15 Q. Somebody could even have a static score of a nine
16 and you could still recommend him for release from the
17 program; is that correct?

18 A. Yes.

19 Q. Because you have, in fact, done that; is that
20 correct?

21 A. Yes.

22 Q. And the fact that somebody is only in Phase 2.1 of
23 the -- completion of the Wellpath program is not a
24 prerequisite for release from the program; is that correct?

25 A. That's correct.

1 Q. And somebody can be in Phase 2.1 of the program
2 and still be eligible for release; is that correct?

3 A. That's correct.

4 Q. And you've, in fact, on other occasions have
5 opined to that; is that correct?

6 A. Yes, sir.

7 Q. And the existence of a chronic personality
8 disorder, the existence of that would not preclude somebody
9 from being released from the program; is that correct?

10 A. Correct. Any one factor in and of itself is not a
11 reason that they are in versus out. For his case, it's a
12 collective whole, a collective analysis of what the static
13 tells us about this individual in this circumstance.

14 In his case he has a chronic personality disorder,
15 yes. There are other offenders that have that too. But in
16 his case he's got that in conjunction with a lack of
17 progress and treatment, withdraw from treatment, frankly,
18 and a dismissal of the need to address the factors inherent
19 in his personality disorder. And continued demonstration of
20 several dynamic risk factors that underline his abnormality
21 and contributed to his risk when he went into the community
22 the last time.

23 In addition to a lack of real protective factors,
24 simply staying with family, if that's his plan, isn't enough
25 to prevent him from reengaging in behaviors. He arguably

1 had a family when he was out in the community the last time.

2 So collectively it's those three areas as well as
3 static factors that estimate his risk to be higher than the
4 average sex offender with a similar score. So it's not any
5 one factor that is keeping him here, it's the collective
6 whole.

7 Q. But withdrawing from treatment would not preclude
8 you from being recommended for release; is that correct?

9 A. Theoretically. Again, it's one factor and so that
10 act in and of itself isn't why he's still here, it's his
11 reasons for withdrawing. It's his pattern of withdrawing
12 and not addressing his treatment factors or treatment
13 relevant risk factors. And then his decision making is
14 emotionally based. It's not grounded in, I've learned
15 something and I don't need to be in this group. It's just a
16 resistance to the feedback that his treatment providers are
17 giving him and the guidance that they're trying to lay out
18 for him.

19 So for him, again, it's not the fact that he
20 withdrew from treatment, that just contributes to -- or why
21 that contributes to his unique factors why it's a problem.

22 Q. I mean, do you recall William Brenson's (ph) case?

23 A. Yes, sir.

24 Q. And do you recall whether or not he had withdrawn
25 from treatment in that case?

1 A. I don't. I think that was in 2015 or 2016.

2 MS. SHAW: Your Honor, objection. This is a case
3 that Mr. Falk is referring to a case that is not this case,
4 it's a different offender, with a different history. I
5 don't know anything about that particular case. And just
6 because that offender withdrew from treatment didn't mean he
7 get out. But Dr. Tross already said withdrawing from
8 treatment doesn't automatically mean you won't get out. So
9 I'm not sure where he's going with this.

10 THE COURT: I'll overrule it. I'll allow it.
11 This is cross-examination, I'll allow it. Go ahead.

12 MS. SHAW: Thank you, Your Honor.

13 BY MR. FALK:

14 Q. And the existence of dynamic risk factors in
15 somebody -- if somebody still has dynamic risk factors this
16 would not preclude them from being released; is that
17 correct?

18 A. Correct. The mere presence of something does not
19 automatically mean a certain result.

20 Q. And somebody could still have lifestyle
21 impulsiveness, poor problem solving, negative social
22 influences and they could still have those dynamic risk
23 factors and they would still be eligible for release; is
24 that correct?

25 A. A lot of things would factor into that decision.

1 The degree to which somebody possesses a given factor. The
2 combination of their willingness to address them and
3 understand their role in their abnormality or personality
4 disorder. The role those things played in their offense
5 decision making, and their offense patterns. The role is
6 going to play in relapse prevention and in creating a
7 release plan that is going to help manage those things.

8 So I don't know of anybody whose gotten out of the
9 program or potentially even could get out of the program
10 that's going to have zero risk or zero issues to continue to
11 work on. I have yet to meet a human being who doesn't have
12 issues to work on.

13 So that really is the degree and the combination
14 of how these factors interplay in this given situation with
15 this given individual that's going to make or break whether
16 or not they're still likely. In Mr. Johnson's case we have
17 consistent pattern of not engaging at a level that would
18 suggest understanding of his personality disorder or a need
19 to mitigate the significant risk factors so that he is not
20 likely to continue engaging in this behavior in the
21 community. The cessation of substances, while good, is not
22 a replacement for something else like an understanding of
23 how substances are going to absolutely increase his risk to
24 engage in any type of criminal behavior to include sexual.

25 So he should actively address his thought process

1 about why using substances in the first place. How he's
2 going to manage urges and impulses to use within the
3 community. And when associating with negative peer groups
4 that are supportive of substance use to include alcohol and
5 marijuana which are pretty widespread. These are things
6 that he needs to address versus just saying, I don't do it
7 anymore.

8 Q. Okay. So it is fair to say though that particular
9 factors that you highlighted in your report are not
10 automatically disqualifying him for release; is that
11 correct?

12 MS. SHAW: Objection. Asked and answered.

13 THE COURT: I'll allow it. Go ahead.

14 MS. SHAW: It's all right, Dr. Tross, you can
15 answer the question.

16 THE WITNESS: Yes. The presence of something does
17 not automatically disqualify or qualify him from one opinion
18 or the other.

19 BY MR. FALK:

20 Q. And it's not just one thing people can be ready
21 for release when they have more than one factor; is that
22 correct?

23 A. Yes.

24 Q. Somebody could have a high static and still have
25 dynamic risk factors and still be ready for release; is that

1 correct?

2 A. Theoretically, yes.

3 Q. Do you recall a case where you opined that
4 somebody was ready for release who had a high static and
5 also had dynamic risk factors?

6 A. Yes.

7 MS. SHAW: Your Honor, before Dr. Tross answers.

8 This is irrelevant to whether Mr. Johnson is ready
9 for release. She's already testified that individuals can
10 have high statics and dynamic risk factors and a personality
11 disorder and still be released. This is needlessly
12 repetitive at this point.

13 THE COURT: Well, and I think he's probably
14 wanting to draw a distinction as to what's the difference
15 between the two cases if, in fact, she has recommended the
16 release for somebody who still fits that criteria. So I'm
17 going to allow it. Go ahead, Mr. Falk.

18 BY MR. FALK:

19 Q. Do you remember doing a report Darryl Garner?

20 A. I, again, supervised that report for Dr. Gillen.
21 I did not interview him directly or complete the report
22 solo, I supervised Dr. Gillen.

23 Q. Did you endorse the conclusions?

24 A. Indeed.

25 Q. Okay. So the conclusions of his report and his

1 report of the bases for his conclusion you endorsed that as
2 well, right?

3 A. I know the answer is yes, but I will tell you that
4 I'm not familiar with that case to be able to answer any
5 more specifically than that.

6 Q. Would it help me if I sent you a copy of it?

7 A. If I had time to reread it in preparation, yes, it
8 would definitely familiarize myself.

9 Q. I mean, I have it. I can email it to you.

10 THE COURT: Mr. Falk, we're not going to take time
11 for you to email a report to her for her to review and then
12 continue with the testimony. Let's go ahead.

13 BY MR. FALK:

14 Q. Okay. So you don't have -- you can't say why
15 somebody with a static of nine and still the existence of
16 dynamic risk factors is eligible for release, whereas my
17 client with a static of six and existing dynamic risk
18 factors is ineligible. You can't make a distinction of that
19 between those two cases. Is that what you're saying?

20 A. Well, actually I can because Mr. Johnson, again,
21 you know, I had the luxury of evaluating him or helping to
22 supervise his case last year as well this year, the group
23 notes, the case management notes, his treatment plans, and
24 his annual treatment summary are collectively highlighting
25 these things. He, quote, He has yet to extensively discuss

1 his sexual preferences. He has not yet commented on efforts
2 to meet his sexual needs appropriately, nor has he discussed
3 any skills or strategies to manage deviance. He has not
4 taken responsibility for his offenses and has not
5 demonstrated remorse for what he has done. These are quotes
6 from those treatment notes.

7 It's also been noted that he is, quote, resistant
8 in his attitudes and thinking are clear indicators that his
9 criminal traits play a role in his thought processing and
10 decision making. These are what's in his treatment plans
11 currently during the review period that I saw him. This is
12 what's in his case management notes, a resistance as well as
13 we see in conjunction with that a withdraw from treatment
14 for -- not to trivialize it, but for silly reasons. He's
15 upset rather than some sort of other reason to withdraw from
16 treatment.

17 Then we have consistent notes that say he has, you
18 know, continues to having difficulty with recognizing and
19 intervening upon appropriately managing his day-to-day risk
20 factors. His interpersonal relationships with others are
21 still marred with verbal abuse whenever he's upset. He went
22 into the community and he had access to the object of his
23 person he was upset with he's been physically abusive to
24 include behavior in the SVP.

25 So, yes, he has a high static, but, again, risk

1 assessment has three other components with which are more
2 heavily weighted given that he can't change the static
3 scores. So I'm looking at the continued presence of an
4 abnormality that he has yet to address in treatment per the
5 treatment notes, and his case manager notes, and his annual
6 treatment summary, which is written by somebody different.

7 In addition to a lack of protective factors other
8 than his self report of I'm going to go live with my family.
9 We don't have a relapse prevention plan. We don't have a
10 realistic release plan for him of how he's going manage
11 himself differently in the community. Part of my review is
12 indeed is limited by his refusal to engage in an interview
13 absolutely, but the actions of one thing does not create the
14 presence of something else. Simply abating from engaging in
15 substance abuse isn't the same thing as having an
16 understanding played a role in his criminal activity and
17 offending behavior and how he's going to manage himself
18 differently going forward.

19 So that's why in this case somebody with a high
20 static and the presence of dynamic risk factors that have
21 gone untreated as well as a continued demonstration of his
22 mental abnormality results in an opinion that he's no
23 longer -- he's likely -- I'm sorry, that he's still likely
24 if released, therefore, he hasn't changed.

25 MR. FALK: Your Honor, I have no further

1 questions.

2 THE COURT: All right. Redirect?

3 MS. SHAW: Just very briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MS. SHAW:

6 Q. Dr. Tross, do you know how long Mr. Johnson has
7 been in phase 2.1 of the program? How many years?

8 A. Several, offhand. I'm sorry, I don't have an
9 exact figure. But I will say Correct Care changed their
10 name to Wellpath in December of 2018. They started
11 assigning phases in the beginning of 2017. I believe he's
12 been in Phase 2.1 ever since then.

13 Q. All right. Thank you. And with respect to the
14 questioning about Darryl Garner, I actually have him as one
15 of my residents and I have his report right here, and, yes,
16 he had high statics, he had nine and a seven. But with
17 respect to him in particular, he showed considerable amounts
18 of investments in his treatment, did he not?

19 A. Again, I do not remember his case well enough to
20 speak to any specifics other than I know it was several
21 years ago he was evaluated, it was Dr. Gillen who did it,
22 and I helped supervise and consult on a case.

23 Q. Okay. Fair enough. You don't remember it's not a
24 problem. But you do -- I mean, your testimony was quite
25 clear, but I'll just boil it down, basically, in your

1 opinion every one of these offenders is different and
2 everyone has different factors that are relevant to their
3 risk of recidivate, correct?

4 A. Absolutely.

5 Q. And is every one of them evaluated on an
6 individual basis?

7 A. Yes, when I do them, that's exactly how I approach
8 it.

9 MS. SHAW: Okay. Thank you. I have nothing
10 further.

11 THE COURT: All right. Ms. Shaw, anybody else
12 you're going to call?

13 MS. SHAW: I do not, Your Honor. Would the Court
14 like closing statement.

15 THE COURT: Well, I don't know. Mr. Falk, do you
16 have anything in reply. Any witness?

17 MR. FALK: No, Your Honor.

18 THE COURT: All right. I'm going to take it under
19 advisement. How about if I can get both Ms. Shaw and
20 Mr. Falk, if both of you all would submit proposed orders.
21 How long do you all need on that?

22 MS. SHAW: I can do it tomorrow, Your Honor.

23 THE COURT: I've got a couple -- I mean, I just
24 want to double check some cases and the statutes. I think
25 I've got a pretty good handle on it, but before I just rule

1 from the cuff here, I'm pretty sure I know what I'm going to
2 do, so it's going to take me about a day to make a decision.
3 How long do you all need to prepare a proposed order?

4 MS. SHAW: I can get it out to your clerk today,
5 Your Honor.

6 MR. FALK: Your Honor, I have a couple of more
7 things on my plate. Could I send it to the Court on Monday?

8 THE COURT: Well, I mean, I can give you ten days.

9 MR. FALK: Thank you, Your Honor.

10 THE COURT: All right. Or how about by next --
11 well, we'll just do that, do it within ten days, okay?

12 MR. FALK: Okay. Thank you.

13 THE COURT: All right. Thank you.

14 END OF REQUESTED PROCEEDINGS

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CERTIFICATE OF REPORTER

State of South Carolina)

County of Horry)

I, Cynthia D. Weaver, Official Court Reporter for the
Fifteenth Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the Court of Common Pleas for Horry
County, South Carolina, on the 11th day of February, 2021.

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

April 2, 2021

Cynthia D. Weaver,
Official Court Reporter
State of South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO: 2006-CP-26-07123
	)	
IN THE MATTER OF THE CARE	)	
AND TREATMENT OF	)	ORDER DENYING
JOHN O'NEIL JOHNSON,	)	ANNUAL REVIEW TRIAL FOR 2019-2020
	)	
<u>RESPONDENT.</u>	)	

This matter comes before the Court on an Annual Review Hearing to determine whether there is probable cause to believe Respondent's mental abnormality or personality disorder has so changed he is safe to be at large and, if released, is not likely to commit acts of sexual violence, and for an order requiring a jury trial on the issue, pursuant to S.C. Code Ann. Section 44-48-110. Respondent is represented by James K. Falk, Esquire. The State of South Carolina is represented by Suzanne J. Shaw, Assistant Attorney General.

Respondent was committed to the Sexually Violent Predator Treatment Program ("SVPTP") on or about July 15, 2008 following a voluntary waiver of his right to a jury trial and entry of the order consenting to civil commitment. As required under the statute, Respondent's mental status has been periodically reviewed. During the 2019-20 review period, Respondent sought an independent evaluation of his mental status. The independent evaluation report was not completed until November 11, 2020.

The Court received a letter from DMH for the 2019-2020 review period dated April 1, 2020, indicating Respondent was seeking an Annual Review hearing at which he seeks his release from the SVPTP, without approval of the DMH Director. Accompanying the letter was an Annual Examination and Review Hearing Notice and an Annual Notice of Right to Petition for Release both dated April 1, 2020, and an Annual Review Treatment Report, dated March 27, 2020, prepared by Dr. Rozanna Tross, Psy.D., on behalf of DMH. Dr. Tross' report was admitted as

State's Exhibit 1 at the Annual Review hearing held on February 11, 2021.

An Annual Review hearing was held via video/WebEx on February 11, 2021 with the consent of all parties. The Respondent was present by video/audioconferencing from WellPath Recovery Solutions where he is currently in treatment. Respondent presented Yadira Baez-Lockard, Psy.D., as an expert witness, and the State presented Rozanna Tross, Psy.D., as an expert witness. The Court qualified both Dr. Baez-Lockard and Dr. Tross as experts in the field of forensic psychology and sexually violent predator evaluations, leaving the Court to weigh the credibility and presentation of two qualified experts. Both experts diagnosed Respondent with Other Specified Personality Disorder, with Antisocial Features.

Dr. Baez-Lockard testified she believed Respondent has completed sex offender treatment, and went on to opine Respondent's condition has so changed he is safe to be at large, and if released, not likely to commit future acts of sexual violence. Dr. Baez-Lockard testified, in her opinion, Respondent was not a risk to reoffend if released because he has strong family support, is aware of cognitive and emotional triggers, has progressed in treatment by completing assignments, attending group sessions, and is able to manage some of his dynamic risk factors. Dr. Baez-Lockard's opinion is primarily based on the self-serving statements and information provided by Respondent during his interviews with her. Neither Dr. Baez-Lockard's testimony on direct examination, nor her report discuss Respondent's dynamic risk factors that he has not made progress on, nor how Respondent has worked to address these factors in treatment. Dr. Baez-Lockard's report also does not take into account Respondent's lack of progress over time in treatment, his lack of substance abuse treatment which significantly contributed to his offending, his lack of completion of the SVPTP program, and his lack of engagement and motivation in treatment from 2019 to present. Dr. Baez-Lockard also failed to make any effort at collateral

contacts with the family members Respondent identified as supports, and failed to verify that his rudimentary discharge plan was, in fact, viable.

Dr. Tross testified Respondent has made some progress in his treatment, but numerous issues remain, and his mental abnormality and personality disorder has not so changed that he is safe to be at large. She opined that he remained likely to commit acts of sexual violence if released to the community. Dr. Tross stated Respondent has multiple active dynamic risk factors which contribute to sexual recidivism including a lack of intimate relationships with adults, lifestyle impulsiveness, resistance to rules and supervision, poor problem solving, grievance/hostility thinking, negative social influences, hostility toward women, callousness/lack of concern for others, and dysfunctional coping. Dr. Tross opined Respondent has not satisfactorily addressed his dynamic risk factors through treatment and, noted particularly, her concern of Respondent's lack of sufficient progress with his treatment goals over time, as well as his lack of motivation for pro-social change and to meaningfully engage in treatment. She highlighted that Respondent remains in the early phases of treatment, and has not made significant progress in his treatment goals, which have remained largely unchanged for the past twelve years,

The purpose of an annual review hearing held pursuant to S.C. Code Section 44-48-110 is for the court to determine whether probable cause exists to believe "the person's mental abnormality or personality disorder has so changed that the person is safe to be at large and, if released, is not likely to commit acts of sexual violence." *See* S.C. Code Ann. § 44-48-110. At the hearing, the committed person bears the burden of showing probable cause exists to believe his mental condition has so changed that he is safe to be released. *See In re Care and Treatment of Tucker*, 353 S.C. 466, 578 S.E.2d 719 (2003). In the context of Sexually Violent Predator cases, a party establishes probable cause when he presents evidence which "would lead a reasonable person

to believe and conscientiously entertain” the proposition set forth at the hearing. *See Care & Treatment of Chandler v. State*, 382 S.C. 250, 257, 676 S.E.2d 676, 680 (2009) (*quoting In re the Care and Treatment of Brown*, 372 S.C. 611, 643 S.E.2d 118 (Ct. App. 2007) (establishing this standard for hearings held pursuant to South Carolina Code § 44-48-80).

In the Tucker case, Tucker appealed the Circuit Court’s finding of no probable cause from his annual review hearing. In that case, Tucker’s expert testified that since Tucker took responsibility for his sexual offending and was “capable and motivated towards continuing sex offender treatment”, that Tucker should continue his treatment in an outpatient setting. Tucker, 353 S.C. 466, 470, 578 S.E.2d 719, 721 (2003). However, DMH’s expert testified that although Tucker had progressed in treatment, he had additional treatment goals that had to be met before he could be eligible for release. Id., 353 S.C. at 471, 578 S.E.2d at 722. The Supreme Court upheld the denial of probable cause stating while evidence exists Tucker could be released to an outpatient setting, he must still show his condition has so changed he is safe to be at large, and if released, unlikely to commit sexually violent acts. Id. Therefore, since Tucker failed to meet this burden, denial was proper.

As in Tucker, Respondent has shown some progress in treatment; however, he has multiple additional treatment goals that need to be met before DMH will consider him eligible for release, specifically his dynamic risk factors discussed above, and the need to meaningfully engage in the treatment process. While Respondent has shown some evidence of progress, in that he is less physically assaultive than he was for the first eight years of his commitment at SVPT, he has failed to establish probable cause to believe his condition has so changed that he is safe to be at large and, if released, is not likely to commit acts of sexual violence.

After weighing the expert testimony offered at the hearing, the Court finds the testimony

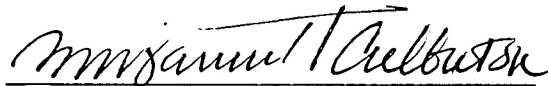
of the State's expert, Dr. Tross, to be more credible. In addition, the Court carefully considered the documents received into the record, and the arguments of counsel. Based on this review, the Court finds the Respondent failed to establish probable cause that Respondent's mental abnormality or personality disorder has so changed that he is safe to be at large, and, if released, not likely to commit acts of sexual violence.

NOW, THEREFORE, it is hereby

ORDERED, that the Respondent shall continue to be confined in a secure facility of the Department of Mental Health for long term control, care and treatment pursuant to the Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*; it is further

ORDERED, that the Respondent continues under the jurisdiction of this Court.

AND IT IS SO ORDERED.



BENJAMIN H. CULBERTSON,
Chief Administrative Judge
Fifteenth Judicial Circuit
Court of Common Pleas

February 23, 2021
Conway, South Carolina

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICES

SEXUALLY VIOLENT PREDATOR ANNUAL REVIEW REPORT
Pursuant to §44-48-110

Name: Johnson, John O'Neil
Date of Birth: [REDACTED]
Date of Commitment: 7/15/08
County: Horry
Review Period: January 2019 to February 2020
Date of Report: 3/27/20
Evaluator: Rozanna Tross, Psy.D.

IDENTIFYING INFORMATION

Mr. John O'Neil Johnson is a 58-year-old male committed to the South Carolina Sexually Violent Predator Treatment Program (SVPTP) facilitated by Wellpath Recovery Solutions (formerly known as Correct Care Recovery Solutions) under the South Carolina Department of Mental Health (SCDMH). On 7/15/08, "the respondent, through his counsel, advised the Court that he will waive his rights...and would not contest and would consent to his commitment pursuant to the Sexually Violent Predator Act." The Court subsequently ordered him committed for "long-term control, care, and treatment." He was admitted to the SVPTP on 7/17/08.

REASON FOR EVALUATION

Pursuant to South Carolina Code §44-48-110, residents committed as SVPs receive a current "examination of [their] mental condition" once every year. This annual review report was requested to assist the Court in determining whether there is "probable cause to believe the resident's mental abnormality or personality disorder has so changed that the person is safe to be at large and, if released, is not likely to commit acts of sexual violence."

South Carolina Statute §44-48-30 defines "mental abnormality" as *a mental condition affecting a person's emotional or volitional capacity that predisposes the person to commit sexually violent offenses*. "Likely to commit acts of sexual violence" is statutorily defined as *the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others*.

NOTIFICATION

Mr. Johnson arrived for his annual review, but declined to be interviewed. An attempt to explain the nature and purpose of the evaluation was made, though Mr. Johnson got up and walked out prior to its completion. He was advised the review was being conducted to assess how he has been addressing his mental abnormalities and how this impacts his risk to sexually reoffend to which he stated, "you don't need me for that." He was advised he could chose to participate in an interview

for the assessment if he chose but that an evaluation would be completed and submitted to the court regardless of his level of participation. Mr. Johnson declined to be interviewed and left the room.

SOURCES OF INFORMATION

Information for this report was gathered from the following sources:

- Review of prior annual review reports.
- Review of Wellpath Recovery Solutions (WPRS) Treatment Records.
- Review of Admission Psychological Evaluation by Geoffrey R. McKee, Ph.D., ABPP, dated 11/3/08.
- Review of Original Commitment Documents to include:
 - Order of Commitment, dated 7/15/08.
 - Forensic Psychiatric Evaluation by Peggy C. Wadman, M.D., M.P.H., dated 2/21/08.
 - Petition Pursuant to the Sexually Violent Predator Act and exhibits, dated 11/10/07.
 - Sexual Predator Referral Form, dated 9/20/07.
 - Probable Cause Determination, dated 10/18/07.
 - Horry County Arrest Warrants, Affidavits, Indictments, and Sentencing Sheets.
 - City of Conway Incident Reports, Supplemental Reports, and Case Histories.
 - Myrtle Beach Police Department Incident, Supplemental Reports, Crime Scene Field Reports, and Follow-Up Investigation reports.
- Records from the South Carolina Department of Corrections.

RELEVANT HISTORY

Records reflect Mr. Johnson was born and raised in Conway, South Carolina, the oldest of five children. He reported a “normal” childhood, though stated his father drank alcohol and was verbally and emotionally abusive toward him and his siblings. Mr. Johnson reported he left school in the eighth or ninth grade as he wanted to “work and earn money.” He stated he was a “slow learner” but denied being involved in special education classes. He indicated he had to repeat the first grade but denied additional academic problems. He reported being involved in “a few” fights while in school, one of which led to a suspension. In an assignment he presented in November 2018, Mr. Johnson stated he was “getting high everyday, shoplifting, drinking, and skipping school.”

Mr. Johnson was incarcerated at the age of 19 and spent the next 19 years in prison. He was released in 2000 but was “in and out” of jail until his incarceration in 2004 for his most recent sexual offense. He reported having few job skills but stated he did work in Masonry.

Mr. Johnson stated he married his wife in 1986, while incarcerated, and they had two children together during conjugal visits. He stated they lived together briefly (e.g., two or three weeks) when he was released from prison in 2000. Mr. Johnson reported he has maintained contact with his two adult children.

Mr. Johnson has reported an extensive history of substance use since the age of 15 and stated his father and several siblings abused alcohol as well. He reported he was under the influence of alcohol, marijuana, and Quaaludes when he committed his first offense. While incarcerated, he stated he

obtained and used Valium, Klonopin, and Xanax and reported using cocaine while incarcerated at a different institution, and crack cocaine while at another. He told his 2008 evaluator he “was often under the influence of drugs in prison.” He indicated he has not used since 2004.

Mr. Johnson denied a medical history prior to his commitment to the SVPTP, other than a knee injury. Since his commitment, he has had knee surgery and been diagnosed with hypertension, hyperlipidemia, cirrhosis with hepatic cysts, gastroesophageal reflux disease, hypothyroidism, hepatitis C, benign prostatic hypertrophy, and gallstones.

During his 2008 Psychiatric Evaluation, Mr. Johnson “denied a history of inpatient or outpatient psychiatric treatment” and denied ever being prescribed psychotropic medication. However, sometime between 2008 and 2010, Mr. Johnson was diagnosed with Bipolar Disorder while at the SVPTP, though his admitting psychological evaluation (from November 2008) and subsequent annual review reports noted he does not have symptoms consistent with this disorder. In 2017 and 2018 records reflect Mr. Johnson was prescribed various medications to assist with impulse control, agitation, anxiety, and depression. Notes from March 2018 stated “It has been learned that there is a significant likelihood that the patient has been giving some of his medication to other residents. Discussed this with patient who denies it. According to staff his behavior has been more erratic than usual which may be consistent with this.” Mr. Johnson’s medications were subsequently ordered crushed and monitored. Notes reflect he was “angry” at having his medication crushed and told staff he would refuse to take them as “it doesn’t even help me.” He denied he was giving medication to other residents and was “preoccupied with feeling he was ‘wrongly accused’ of giving away his medication.” Mr. Johnson later reported having panic attacks, but no symptoms have been observed or documented. Notes indicated he often reports irritation in relation to his circumstances and complains of things not working out the way he would like. He frequently asks to speak with the psychiatrist regarding a medication change, saying it makes him too tired, gives him headaches, makes him gain weight, or causes memory problems. Each medication prescribed appears to be changed within a few months of it being prescribed. Despite guidance and direction from the psychiatrist, Mr. Johnson appears to insist on the medication changes.

Current records reflect Mr. Johnson denies depression, anxiety, panic attacks, or suicidal ideation. When meeting with the psychiatrist he describes himself as “good” but voices complaints about “not getting the job he wanted” or feeling there is “no point” in attending groups as “I’m never getting out of here.” In July 2019, he told the psychiatrist “he is content just staying here and living his life here because he feels there is really no other choice.” During his visits he frequently asked for medication changes due to perceived “weight gain” or having “headaches” or being “tired.” In November 2019 he described his mood as “up and down” and discussed frustration over his medication (an anticonvulsant). In February 2020 he told the psychiatrist he was “much more agitated and irritable” over the past several weeks as there were “several incidents that bothered him.” He stated he feels his Vistaril (an antihistamine) has caused him to gain weight and voiced concerns about being on “too low” of a dose of his anticonvulsant. His medication was adjusted and in March 2020, he complained the new medication was causing “memory problems.” Case management notes reflect Mr. Johnson had an infected tooth (which was pulled) and complained of having a “cold” in January and February of this year. No other medical concerns or problems were noted.

SEXUAL OFFENSE HISTORY

First Offense

In 1980, Mr. Johnson (age 20) and a male codefendant raped a 17-year-old female unknown to them. Official records note the victim was unloading her luggage in a motel parking lot when Mr. Johnson and his codefendant approached her in a vehicle. Mr. Johnson got out, grabbed her, put his hand over her mouth, and forced her into a truck driven by the codefendant. Mr. Johnson reportedly threatened to shoot the victim. The codefendant drove the truck to a remote location, where Mr. Johnson and the codefendant forced the victim to perform oral sex on them and raped the victim repeatedly. Mr. Johnson raped the victim four times vaginally over a period of two and a half hours. They then drove the victim to a gas station and left her there with \$5. Mr. Johnson was charged with Criminal Sexual Conduct in the First Degree, Criminal Sexual Conduct Second Degree, Criminal Sexual Conduct Third Degree, and Kidnapping. On 1/12/81, he pleaded guilty to Criminal Sexual Conduct First Degree, and was sentenced to 30 years of incarceration. The remaining charges were nolle prossed. Mr. Johnson was released on parole in June 2000, only to have his parole revoked three weeks later after he received a charge of Criminal Domestic Violence toward his wife. He was incarcerated and released again in December 2000.

When asked about this offense during his February 2008 evaluation, Mr. Johnson reported he was under the influence of alcohol, marijuana, and Quaaludes during the offense. In subsequent evaluations, he reported he had met a man who had recently stolen a truck. They were drinking and smoking marijuana, driving around the area. They saw the woman and stopped to ask her to drink or use drugs with them. He acknowledged threatening and raping the victim.

Second Offense

On or about 4/18/03, Mr. Johnson (age 42) raped a 35-year-old woman unknown to him, believed to have an intellectual disability. Records reflect he approached the victim, told her she looked attractive, and stated he "wanted a relationship." He walked with the victim, then forced her behind some bushes and pulled down her shorts. He then raped her while threatening her with a knife. After the assault, Mr. Johnson walked with the victim further. He then pushed her behind some bushes and raped her a second time. During this assault he attempted to force the victim to perform oral sex and then to "finish him off" with her hand. He then told her to meet him at a park the next day. Mr. Johnson was subsequently charged with Criminal Sexual Conduct in the First Degree. On 7/14/04, he pleaded guilty to Assault and Battery of a High and Aggravated Nature, and was sentenced to five years of incarceration. At the time of this assault, Mr. Johnson was on probation for Assault and Battery with Intent to Kill. His probation for his offense was subsequently revoked.

When asked about this offense during his February 2008 evaluation, Mr. Johnson reported he was under the influence of alcohol at the time of this offense. He denied he raped her and said she was "looking for a relationship." Per the evaluator's report, Mr. Johnson said, "Whatever sex they had was consensual." During his 2016 evaluation, he said he asked the victim, "Would she masturbate me if I stopped (vaginal intercourse), and she said yes. I took her hand and put it on my penis. She masturbated me for a while." During his 2017 evaluation, Mr. Johnson stated he was walking to a friend's house when the woman waved at him from across the street. He acknowledged she was

"slow." He said he thought she wanted sex. He said they attempted to have sex, but she wanted him to stop, to which he stated he did.

In 2012, Mr. Johnson reported to the evaluator he gave 15 to 20 women alcohol and drugs in exchange for sex. He noted, "I never actually raped them." During his 2017 evaluation, he stated he viewed these women as victims because he was taking advantage of them and wanted nothing more than sex from them.

Non-Sexual Offense History

In addition to the sexual offenses, Mr. Johnson has been convicted of Grand Larceny, Criminal Domestic Violence, Shoplifting, Open Container in a Vehicle, Public Drunk, Public Disorderly Conduct, Resisting Arrest, Failure to Register as a Sex Offender, Simple Assault and Battery, Simple Assault, Assault and Battery of a High and Aggravated Nature, Simple Possession of Marijuana, and Assault and Battery with Intent to Kill.

ORIGINAL COMMITMENT FINDINGS

Mr. Johnson was evaluated in February 2008 to see if he met criteria to be committed as a Sexually Violent Predator. The evaluator concluded he met diagnostic criteria for Alcohol Dependence, Cannabis Abuse, Cocaine Abuse, Anxiolytic Abuse, and Personality Disorder Not Otherwise Specified (Antisocial Features) and concluded these disorders "are often associated with decreased self-control, disinhibition, and irresponsible social behavior and have played a role in many of his past illegal acts and sex offenses." The evaluator reported Mr. Johnson "was assigned a high risk of sexual recidivism" and that "he has demonstrated serious difficulty controlling his behavior."

CLINICAL PRESENTATION

Mr. Johnson declined to be interviewed for this evaluation. He presented to the interview room (staff brought him 22 minutes late to his interview) where a video camera was set up, but was in the room only a few minutes. When asked if he wanted to participate in his annual review interview he indicated, "Well I'm here." However, when the notification was gone over with him he stated "you don't need me for that" and walked out of the room. His mannerisms and tone of voice suggested hostility, or at least agitation.

DIAGNOSTIC FORMULATION

Mr. Johnson has consistently been diagnosed with Other-Specified Personality Disorder, with Antisocial Features; Alcohol Use Disorder, in sustained remission, In a controlled environment; Cannabis Use Disorder, in sustained remission, In a controlled environment; Cocaine Use Disorder, in sustained remission, in a controlled environment; and Sedative, Hypnotic, or Anxiolytic Use Disorder, In a controlled environment.

A personality disorder is "an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual." Personality disorders result in maladaptive distress or impairment in important areas of functioning across a variety of settings for the majority of an individual's life. Antisocial Personality Disorder is a pervasive pattern of disregard for and violation of the rights of others. As evidenced by his criminal history and recurring institutional infractions, he

demonstrates this pattern, with a history of failure to conform his behavior with respect to social and legal norms. Mr. Johnson has demonstrated marked impulsivity, to include self-damaging behaviors (e.g., substance use). Based on the available history, there is no evidence that Mr. Johnson exhibited behavior prior to age 15 to warrant a diagnosis of Conduct Disorder, which is a prerequisite to a diagnosis of Antisocial Personality Disorder. As such, his current presentation is best described by Other Specified Personality Disorder, with Antisocial Features.

Mr. Johnson has a well-documented history of substance use and abuse. He began using substances at age 15 and continued to consume them throughout his incarceration in SCDC. He acknowledged obtaining and abusing Valium, Klonopin, Xanax, cocaine, and "buck" while incarcerated. His substance use has resulted in clinically significant impairment in functioning in multiple life domains. The specifier, *in sustained remission* is used when no criteria are met for a period of 12 months or longer. Mr. Johnson is presumably abstinent from alcohol, cannabis, and cocaine in the SVPTP. The specifier, *in a controlled environment* is used when the individual is in an environment in which access to the substance is restricted (e.g., prison). However, Mr. Johnson has been prescribed sedating and anxiolytic medications throughout his commitment, including within the past year. He has expressed some desire to cope without medications, fallen asleep or been drowsy during group sessions, and has developed high ammonia levels and liver problems potentially attributed to the medications. As such, his prescribed medication regimen precludes the specifier of "in remission" for the latter substance use disorder.

RISK ASSESSMENT

The key factors empirically supported through the research as contributing to sexual offense recidivism are typically divided into static and dynamic factors. Static factors (e.g., offense and victim characteristics) are relatively fixed aspects of an offender's history and therefore do not change with treatment interventions, environmental changes, or in terms of relationship to risk. Dynamic or sometimes referred to as psychologically meaningful factors (e.g., relationship status, deviant sexual interests, and compliance with supervision), are changeable and amenable to treatment and/or environmental manipulations and can help mitigate risk if adequately managed or intervened upon. Assessment of both static and dynamic factors is involved in determining risk for sexual reoffense.

Additionally, an offender's treatment compliance, future plans, sources of community support, and individual protective factors are risk relevant considerations. Treatment compliance is displayed when an individual regularly attends and actively participates in treatment (e.g., contributes meaningfully to group, completes assignments, and practices learned skills) and is motivated for prosocial change. Protective factors are characteristics (e.g., skills, strengths, and coping strategies), resources, or aspects of one's environment that mitigate recidivism risk or help individuals better manage stressful situations. These include factors such as prosocial identity and connections, stability and self-control, and professionally-provided support. Thus, assessment of static and dynamic risk factors, treatment compliance, and protective factors, are all involved in assessing risk for sexual recidivism.

STATIC RISK FACTORS

The following items have been empirically supported in the literature as contributing to sexual recidivism: having prior sexual offenses, having deviant sexual interests, psychopathy, being young at the time of offending, having stranger and/or unrelated victims, having male victims, never having been married or in a committed relationship, and violating the conditions of release and/or treatment (Witt & Conroy, 2009). Mr. Johnson has a prior sexual offense, stranger and unrelated victims, and has violated the conditions of both probation and parole.

Static 99R and Static-2002R:

The Static-99R and Static-2002R are actuarial risk assessment instruments designed to assess risk of sexual recidivism for adult males who have already been charged with or convicted of at least one sex offense against a child or non-consenting adult. The instruments provide a relative degree of risk for sexual recidivism based on commonly available demographic and criminal history information that has been found to correlate with sexual recidivism in adult male sex offenders. The recidivism estimates were derived from new charges and reconvictions of *groups* of individuals; as such, these estimates do not directly correspond to the recidivism risk of an *individual offender*. Additionally, risk estimates involve some degree of “plus or minus” error that should be considered when interpreting each result listed below. The Static-2002R differs from the Static-99R in that it addresses persistence of sexual offending, deviant sexual interests and general criminality. When used together, these two instruments add incremental validity to risk prediction. Authors of the Static-99R and Static-2002R now suggest using both instruments when assessing risk prediction in high stakes evaluations, to include Sexually Violent Predator evaluations.

Mr. Johnson’s score of 7 on the Static-99R places him in the Level IVb or Well Above Average Risk category of being charged with or convicted of another sexual offense relative to other adult male sex offenders. This level is described as “perceptibly higher risk than typical offenders.” In routine samples with the same score as Mr. Johnson, the five-year sexual recidivism rate was 27.2% with confidence intervals between 24% and 30.7%.

Mr. Johnson’s score on the Static-2002R (6) places him in the Above Average Risk category and places his five-year sexual recidivism rate at 19.2% (with confidence intervals between 16.9 and 21.6%). Collectively, his static risk falls between the above average and well above average range.

DYNAMIC RISK FACTORS

The following items have been empirically supported as contributing to sexual recidivism (Mann, Hanson, & Thornton, 2010): having a sexual preoccupation, a sexual preference for prepubescent or pubescent children, sexualized violence, multiple paraphilias, offense-supportive attitudes, emotional congruence with children, a lack of emotionally intimate relationships with adults, lifestyle impulsiveness, exhibiting poor problem solving, demonstrating resistance to rules and supervision, grievance/hostility, and having negative social influences. Additionally, there are several factors found to have significant predictive value for sexual recidivism but which have less empirical support to date. These are hostility toward women, Machiavellianism, possessing a callousness/lack of concern for others, and displaying dysfunctional coping.

Based on the available information, including Mr. Johnson's history, offense dynamics, treatment records, and self-report, he appears to demonstrate/have the dynamic risk factors of *Lack of Emotionally Intimate Relationships with Adults; Lifestyle Impulsiveness; Resistance to Rules and Supervision; Poor Problem-Solving; Grievance/Hostility; Negative Social Influences; Hostility toward women; Callousness/Lack of Concern for Others; and Dysfunctional Coping*. The majority of these are inherent in Mr. Johnson's personality disorder, as they can be seen in his interpersonal interactions, his cognition, his affective instability, and impulse control difficulties. He continues to evidence difficulty with recognizing, intervening upon, and appropriately managing these factors in his day-to-day life, seems indifferent to the consequences of his actions, and is dismissive of feedback related to the areas with which he needs to address.

For example, Mr. Johnsons' annual reviews from 2010 to 2016 described frequent disciplinary concerns, aggression, and assaultive and threatening behaviors since being at the SVPTP. By 2015, he had identified seven different residents he had attacked or assaulted in the program. At one point he was transferred out of the facility for stabilization for several months, and subsequently placed on long-term secure management status. While there is a notable decrease in physical aggression, this is fairly recent and group notes or treatment assignments do not reflect insight into his actions or how he has been able to refrain from physically acting out since. When upset, Mr. Johnson continues to verbally lash out, vilify others, and attribute sinister intent to their actions. His significant distorted thinking impairs his ability to work through emotional upsets and develop prosocial problem solving techniques or cope with everyday life situations in a healthy manner. He continues to be described as "resistant" to feedback or the insights of others, "not receptive to skills discussed in group sessions," and someone who allows his emotions to "impact his decision-making."

In terms of addressing his sexual offenses, notes stated he has "yet to extensively discuss" his sexual preferences, has "not yet commented on efforts to meet his sexual needs appropriately," nor has he "discussed any skills or strategies to manage deviance." Treatment notes reflect Mr. Johnson "has not taken responsibility for his offenses and has not demonstrated remorse for the harm he caused." It has also been noted that his "resistant attitudes and grievance thinking are an indicator that criminal personality traits play a role in his thought processes and decision-making."

TREATMENT COMPLIANCE

Throughout the current review period, Mr. Johnson's participation in group has been minimal at best prior to his decision to withdraw from treatment. Early notes consistently state Mr. Johnson attends group but does not engage in the group discussions and does not offer feedback or insight to his peers. Notes reflect he presented one assignment in November 2018 related to his offenses, though details of that presentation are not noted. Notes reflect Mr. Johnson began decreasing his use of coping logs in February 2019 citing he "had nothing to write about." He also began voicing frustration at being offered a new job (the program moved to a new facility in January 2019 prompting everyone to begin receiving new facility assignments), which he "declined [] because of the number of days and hours he was offered." He told his case manager he "got upset" and told the clinical director "where he could shove the job." Mr. Johnson also complained of a tooth ache and feeling he was not getting the proper treatment. He told his case manager he was considering withdrawing from group and "requested information on the privileges he would lose with

withdrawing from treatment.” His case manager noted Mr. Johnson was “angry and upset” and “could not look at the situation logically.” He later told his case manager he did not want to withdraw from treatment and was able to note such a decision was indicative of “poor problem-solving and dysfunctional coping.” In April 2019, Mr. Johnson expressed he now had an “infection” in his tooth and felt he was not being treated due to his decision to turn down the job. His case manager indicated Mr. Johnson “tends to catastrophize the situation” and exhibits distorted thinking about the motives of others. It was noted Mr. Johnson had declined to attend group due to his tooth pain, accumulating over 17 absences. When in attendance, notes stated he did not participate unless “engaged by the facilitator.” In July 2019, Mr. Johnson officially withdrew from the treatment program, to include engaging in his case management sessions. In September 2019, Mr. Johnson was willing to again meet with his case manager, though indicated he did not have any concerns or issues to discuss. In November 2019, he told his new case manager he “does not require case management.” He also told his case manager he would like to “waive my right” for his upcoming annual review, meaning he did not want to have an annual review evaluation. He told his case manager “please notify them so I am not written up for not showing up (for the interview).” He added, “I know I’ll be here for a while.” In December 2019, Mr. Johnson “expressed interest in returning to group” and indicated he would like to “get back on track with my treatment” as the new year was approaching. He asked if he could be placed in a “special needs group where I won’t be embarrassed to ask for help” and told his case manager he “only” had a third grade education (though this is inconsistent with prior reports). Despite his interest in returning to group, he stated he did not want to begin groups until January 2020, telling his case manager “I’m not ready to start yet.” He began groups with the special needs track on 1/14/20 but told his case manager “I am not working on my assignment, I haven’t started. I’m not in a hurry to phase up.” In January 2020, Mr. Johnson received an incident report for providing contraband to a peer.

PROTECTIVE FACTORS

Notes reflect Mr. Johnson has “has done little this review period to prepare himself for discharge” though he has reported having family in the community with which he plans to reside when released. However, he has reported he has not been in contact with them “for several years.” Notes from January 2020 indicated Mr. Johnson expressed he wanted to fill out the paperwork to put some family members on his approved phone list.

CONCLUSION

Mr. Johnson has not yet addressed his mental abnormality. He has not made progress in treatment over the past year nor has he made improvements in his ability to effectively problem solve, manage emotional upsets, demonstrate adequate or prosocial coping skills, challenge distorted thinking, manage criminal thinking, or manage his cantankerous disposition. As indicated above, he continues to demonstrate interpersonal difficulties, distorted thinking, affective instability, and impulse control difficulties. He continues to evidence difficulty with recognizing, intervening upon, and appropriately managing his dynamic risk factors in his day-to-day life, seems indifferent to the consequences of his actions, and is dismissive of feedback related to the areas with which he needs to address. Therefore, it is my opinion Mr. Johnson’s mental abnormality has not so changed and he remains likely to commit acts of sexual violence if released.

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Mar 21 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Benjamin H Culbertson

IN THE MATTER OF THE CARE AND
TREATMENT OF JOHN O'NEIL JOHNSON,

APPELLANT

APPELLATE CASE NO. 2021-000249

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all matter proposed to be included by any of the parties and not any other material. And that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings"

s/ James Falk

Falk Law Firm
PO Box 1058
CHARLESTON, SC 29402
(843) 606-6007

March 20, 2022