STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chesterfield County
The Honorable Michael S. Holt, Circuit Court Judge
Appellate Case No. 2022-000956

In the Matter of the Care and Treatment
of Wiley L. Chapman,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Judge Holt did not abuse his discretion by excluding evidence regarding outpatient sex offender treatment modalities because the issue before the jury in a SVPA case is whether the person's risk to re-offend sexually is such that he should be confined for long term control, care and treatment, and the specific modalities of treatment, or even whether any treatment is available for the person's particular mental abnormality or personality, is irrelevant and potentially confusing for the jury.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

In June 1991, Appellant Wiley L. Chapman pled guilty to criminal sexual conduct in the first degree, which is a statutorily delineated sexually violent offense, and was sentenced to thirty years incarceration. In June 2020, Respondent State of South Carolina initiated proceedings pursuant to the South Carolina Sexually Violent Predator Act (SVPA), S.C. Code Ann. §§44-48-10, *et seq.* (2018), seeking Appellant's civil commitment for long term control, care and treatment. The matter was called for a jury trial in June 2022 before the Honorable Michael S. Holt, Circuit Court Judge.

Prior to trial, the State moved to exclude any reference to the details or type of treatment Appellant would receive if committed, contending such evidence was irrelevant to the issue of whether Appellant has a mental abnormality and qualifying conviction. Citing a seminal United States Supreme Court case, the State argued the type of treatment or likelihood of success in treatment were not questions before the jury and allowing such evidence would create confusion for the jurors. (Trial Transcript [TT], pp. 39-40; Record on Appeal [R.], pp. 8-9).

Appellant argued he should be allowed to inquire about what type of treatment is generally used for sex offenders because the jury had to decide whether any treatment needed should be in a secure facility or as an outpatient. The State responded that neither expert involved in the case was asked to answer the question regarding what treatment was needed or whether it would be effective. (TT, pp. 40-43; R., pp. 9-12).

Judge Holt expressed concern about confusing the jury if questions of treatment were raised. He then instructed the parties to "[s]tay away from treatment once inside the facility." (TT, pp. 43-44; R., pp.12-13).

The State presented testimony from Emily Gottfried, Ph.D., who was qualified as an expert in clinical and forensic psychology and sex offender evaluations. Dr. Gottfried is the director of the Medical University of South Carolina (MUSC) Sexual Behaviors Clinic and Lab (SBCL). The SCBL provides sex offender assessment, evaluation and treatment. (Trial Transcript [TT], pp. 104-115; Record on Appeal [R.], pp. 73-84).

Dr. Gottfried testified the SBCL conducted a forensic evaluation of Appellant, which included reviewing all available records, psychological and physiological testing and assessments, and a comprehensive clinical interview. According to the records Dr. Gottfried reviewed, Appellant was convicted in 1986 of assault of a female in North Carolina and was sentenced to two years probation. Approximately a year after his conviction, and while he was on probation from the 1986 conviction, Appellant was arrested for criminal sexual conduct in the first degree in South Carolina.

Appellant pled guilty to criminal sexual conduct in the third degree on the South Carolina charge in 1987 and was sentenced to six years incarceration. After he was released to probation on that conviction, Appellant was charged with criminal sexual conduct in the first degree in April 1991, pled guilty to that offense and was sentenced to thirty years incarceration, to be served consecutive to a thirty-year sentence imposed on a burglary first degree conviction. (TT, pp. 115-131, Plaintiff's Exhibits 1 and 2; R., pp. 84-100, 416-424).

Dr. Gottfried testified that when she interviewed Appellant, he initially seemed polite, pleasant, and easy going, but when she started asking him about his sexual offenses and general sexual history, Appellant's "demeanor changed pretty significantly." He became "unable to contain or control his emotions, very angry, guarded with information, defensive and a little combative." Dr. Gottfried further testified Appellant had a history of impulsivity,

irresponsibility, sexual preoccupation, and conning, manipulating, or exploiting others, and there were discrepancies in the versions of Appellant's sexual history as he reported it to the court appointed evaluator and to her. (TT, pp. 121-126; R., pp. 90-95).

When asked about his 1986 conviction, Appellant stated he took the twenty-year-old victim somewhere in a car and he was trying to get "some sex" but the victim pushed him away and told him no. He stated "he tried to force himself on her, tried to open her legs to have sex," and she "kept resisting." A police car stopped because of the late hour, and Appellant told Dr. Gottfried if the police had not interrupted, he "probably would of ended up assaulting her," which he clarified as "raping her." Appellant stated he was "sexually aroused during this assault and had an erection at the time." (TT, pp. 128-129; R., pp. 97-98).

Appellant's 1987 criminal sexual conduct third degree conviction involved a fifteen-year-old female who was walking to a baby-sitting job when Appellant approached her, threw her to the ground, hit and choked her, threatened to kill her and then raped her. Appellant told Dr. Gottfried he was dating the victim at the time, and she was angry about him being with another of his girlfriends. According to Appellant's version, he went to the victim's house, got in bed with her and tried to have sex with her, but she said no. Appellant stated he did not take no for an answer, pulled her legs apart, had sex with her and then left. He said he "just really wanted sex." (TT, pp. 130-131, Plaintiff's Exhibit 1; R., pp. 99-100, 416-419).

Dr. Gottfried testified that during the court appointed evaluator's evaluation, Appellant described this victim as "big and fat and unattractive," which he also told Dr. Gottfried. Appellant told the court appointed evaluator Appellant and the victim had "consensual sex" for a while, which the victim wanted to stop but Appellant did not stop. Appellant also told the court

appointed evaluator he had intended to break up with the victim the day of the offense and it was the last time he would have sex with her. (TT, pp. 132-133; R., pp. 101-102).

Dr. Gottfried stated Appellant's disparaging references to the victim indicated hostility toward women which can be a risk factor for re-offending. She further testified sexual arousal when someone is fighting you, crying or saying no is not typical sexual functioning, and could be a risk factor. Appellant told Dr. Gottfried that he was aroused and ejaculated during the attack. (TT, pp. 133-136; R., pp. 102-105).

In 1991, shortly after Appellant was released from prison on the 1987 conviction, he was charged with criminal sexual conduct in the first degree, burglary in the first degree and kidnapping. He ultimately pled guilty to criminal sexual conduct in the first degree and burglary in the first degree and was sentenced to consecutive thirty-year prison terms. (TT, pp. 136-137, Plaintiff's Exhibit 2; R., pp. 105-106; 420-424).

According to the official records, Appellant broke into a stranger's home, hit the female occupant (approximately sixty years old) on the head, took her out of the house, put her in his car and drove approximately four miles from the house. He then took the victim out of the car, continued hitting her on her head and body, and then raped her. After he raped the victim, Appellant took her back close to her house. (TT, p. 137; R., p. 106).

Regarding this offense, Appellant told Dr. Gottfried his brother-in-law asked Appellant to drive him to rob a lady, but the victim did not have any money. Appellant admitted kidnapping the victim and sexual assaulting her, and confirmed he was sexually aroused and ejaculated during the assault. Dr. Gottfried testified Appellant's conduct during this sexual assault "seems escalated" and "more violent" than the 1987 and 1986 offenses, and it suggested a diverse victim

pool (a fifteen-year-old girl versus a sixty year old woman), all of which were risk factors for re-offending sexually. (TT, pp. 137-140; R., pp. 106-109).

During his incarceration after the 1991 convictions, Appellant was charged with eight disciplinary infractions between 1996 and 2015, three of which resulted in sanctions. In August 1996, he was charged with striking a correctional officer with/without a weapon and refusing/failing to obey orders. According to the records, Appellant pushed a female sergeant with the door trying to keep her from entering a room. Appellant told Dr. Gottfried he was waiting in an office to see the office secretary when the sergeant told him to go back to work, and the sergeant actually slammed the door herself. Appellant was convicted of both charges after a hearing. As to the eight disciplinaries, Appellant told Dr. Gottfried most of the complainants were female, which Dr. Gottfried testified was significant when considered with other data she had. (TT, pp. 140-143; R., pp. 109-112).

Dr. Gottfried testified Appellant had committed some relatively minor nonsexual offenses and an assault and battery that involved beating a woman with his fist, but Appellant's sexual offenses were "close together, significant, serious, notable." She stated that was a data point to be considered when looking at a potential diagnosis. (TT, pp.148-149; R., pp, 117-118),

According to records from the South Carolina Department of Corrections (SCDC), Appellant took a sex offender treatment class during his first incarceration in 1988, but he re-offended after he was released from SCDC. Dr. Gottfried testified that was significant because it suggested "either the treatment didn't target when he needed, he disregarded the treatment, [or] he wasn't able to control that behavior." With the treatment, Appellant "should theoretically have learned how to manage those behaviors, and despite having the treatment, he still offended." After Appellant was reincarcerated in 1991, he again participated in the SCDC sex

offender class in 1991 and 1993, but there is no record of him participating in any additional sex offender treatment programs at SCDC. (TT, pp. 150-152; R., pp. 119-121).

Dr. Gottfried diagnosed Appellant with Other Specified Personality Disorder with antisocial traits, which she based on Appellant's "demonstrated characteristics of antisocial personality across his at least adult lifetime." Dr. Gottfried testified the court appoint evaluator also diagnosed Appellant with that disorder. (TT, pp.155-157; R., pp. 124-126).

Dr. Gottfried administered a comprehensive battery of tests and assessments as part of Appellant's evaluation. The assessments included two actuarial risk assessments – the Static-99R and the Static-2002R. Dr. Gottfried testified Appellant's score on the Static-99R put him in the well above average risk to re-offend sexually category, which correlates to a rate of sexual re-offending that is three to four times the average re-offense rate of individuals who have prior sex offenses. Appellant's score on the Static-2002R put him in the above average risk to re-offend sexually category, which placed him higher than 94% of other offenders. The court appointed evaluator also scored those risk assessments and arrived at the same results. Dr. Gottfried testified the Static assessments only consider reported and charged offenses, and it is possible the results underestimate an individual's risk because sexual offenses are the least likely offenses to be reported to authorities. (TT, pp. 157-163; R., pp. 126-132).

Dr. Gottfried also diagnosed Appellant with Other Specified Paraphilic Disorder, Paraphilic Coercive Disorder. She explained the coercive disorder is sexual arousal to coercion and sexualized power over another person and the acts over having that power, such as raping that person. Dr. Gottfried testified Appellant admitted the control and power over his victims was arousing, and stated he did think the power aspect was behind all of his actions. (TT, pp. 164-166; R., pp. 133-135).

Dr. Gottfried testified the facts of Appellant's sexual offenses and criminal history also supported a paraphilic coercive disorder diagnosis. The significant facts included: Appellant reported being aroused and ejaculating during each of the sex offenses that were clearly nonconsensual; the sex offenses had a really similar pattern; Appellant had minor nonsexual offenses in his criminal history, there was an overrepresentation of sexual offenses; he offended against a victim who had previously consented to sexual activity with Appellant, suggesting a level of arousal to the nonconsenting aspect; Appellant offended against individuals where there was a high likelihood he would be caught; and at the time he committed two of the rapes Appellant had consenting partners who would have sex with him which also suggests arousal to the coercive behavior. (TT, pp. 165-168; R., pp.134-137).

The psychological assessments Dr. Gottfried administered indicated a possibility Appellant would underreport things that might put him in a negative light and deny minor faults that most people would admit, exaggerate any positive traits, and deny engaging in sexual behaviors or having sexual thoughts. One test indicated there was a high probability Appellant has a substance abuse disorder, and Dr. Gottfried testified substance abuse was a risk factor for re-offending because it would lower inhibitions that might stop the person from doing behaviors. (TT, pp. 168-176; R., pp.137-145).

Another assessment Dr. Gottfried administered indicated Appellant had some psychopathic traits but did not meet the full criteria for a psychopathic disorder diagnosis. The traits identified included: lack of remorse or guilt; lack of empathy; many short term relationships; community supervision failure; overly high self-esteem; pathological lying, conning and manipulating others; a history of promiscuous sexual behavior; impulsivity; irresponsibility; and failure to accept responsibility for his own actions. Dr. Gottfried testified

there is an overlap between antisocial personality disorders and psychopathy, and the identified psychopathic traits can be a risk factor for re-offending. (TT, pp. 177-179; R., pp. 146-148).

Dr. Gottfried testified there are dynamic risk factors for re-offending that are not factored into the Static assessments. She stated Appellant "has a significant number of dynamic risk factors," including sexual deviation, preoccupation with sex, traits of antisocial personality disorder and some features of psychopathy, substance abuse history problems, relationship problems, physical harm in sexual offending, multiple sex offenses, extreme minimization and denial of sexual offending, hostility toward women, a negative attitude toward supervision, and a lack of realistic plans to avoid re-offending. Appellant's dynamic risk factors placed him in the high range for re-offending because "a high level of effort or intervention is required to prevent future acts of sexual violence." Dr. Gottfried testified the court appointed evaluator identified many of the same dynamic risk factors. (TT, pp. 179-185, 257-268; R., pp. 148-154, 226-237).

Appellant told Dr. Gottfried he planned to move to Georgia to live with his brother, have a car business or expand his brother's car business, and "help mentor children in Georgia." As to treatment if released, Appellant told Dr. Gottfried Sheriff Victor Hill had a program Appellant could enter, but the court appointed evaluator discovered no such program exists. Appellant stated "thinking about sex could put him at risk for sexually offending," but "he had no realistic plans to prevent future offending." (TT, pp. 185-191; R., pp. 154-160).

Dr. Gottfried opined to a reasonable degree of psychological certainty that Appellant is a high risk to re-offend sexually due to his combination of antisocial and psychopathic traits, which affect his volitional control and predispose him to commit sexually violent offenses. She further opined that he needs long term treatment to learn how to manage sexual urges, and he

poses a menace to the health, safety, and welfare of society at large. (TT, pp. 192-194; R., pp. 161-163).

After Dr. Gottfried's direct testimony, Appellant again asked Judge Holt to allow questioning of Dr. Gottfried about outpatient treatment, contending Dr. Gottfried opened the door to inquiries regarding treatment by stating during her qualifications testimony that testifying she treats sex offenders and there was an intensive outpatient treatment center at the SBCL. The State argued Dr. Gottfried was not asked to render an opinion regarding what type of treatment modality Appellant needs, only whether he has a mental abnormality or personality disorder that makes it likely Appellant will re-offend, and allowing questions regarding the general type of treatment modalities would confuse the jury about the issue of inpatient versus outpatient treatment. Judge Holt denied Appellant's request, finding the door was not opened by Dr. Gottfried's testimony. (TT, pp. 196-199; R., pp.165-168).

Appellant then proffered testimony from Dr. Gottfried about the treatment provided at the SBCL. Dr. Gottfried testified "a couple" of people had gone through the program either prior to a criminal trial (not court ordered) or as part of a sentencing deal, and it was individualized treatment depending on the person's specific treatment needs and treatment plan. She testified she was not asked to opine on what form of treatment may or may not be effective for Appellant and had not formed any treatment plans regarding him. (TT, pp. 218-221; R., pp, 187-190).

Appellant presented testimony from Christopher Gillen, Psy.D., who was court-appointed to evaluate Appellant under the SVPA and was qualified as an expert in forensic psychology sexually violent predator assessments. Dr. Gillen's evaluation protocol includes reviewing all available records, conducting collateral interviews as necessary and interviewing the person to

gather information about the person's background and general history. Dr. Gillen also scores the Static 99-R and 2002-R. (TT, pp. 277-293; R., pp.246-262).

When asked about the other assessments Dr. Gottfried used in evaluating Appellant, Dr. Gillen stated he was able to gather the same information in his methodology, and "the most basic principles that we're taught in, in school is that everything you add [to your testing battery] must pass kind of a basic sort of test what incremental value is that thing giving because [any added test] is not just increasing the time of the evaluation but that's adding costs to what's going on." He further stated he did not use the assessments Dr. Gottfried utilized "because I felt I was able to answer those questions, get that information in a very thorough manner by talking to [Appellant], reviewing the records, and talking to other sources that I didn't need to basically increase the cost of the evaluation to get it." (TT, pp. 293-298; R., pp. 262-267).

On the Static risk assessments, Dr. Gillen reached the same scores as Dr. Gottfried, and he diagnosed Appellant with the same personality disorder that Dr. Gottfried diagnosed. He disagreed with Dr. Gottfried's diagnosis of Other Specified Paraphilic Disorder – Paraphilic Coercive Disorder, however, because he believed the multiple rapes Appellant committed were due to something other than a paraphilic or deviate sexual interest motivation. Dr. Gillen testified that based on his review of the records and the offense patterns, he believed it was "a combination of [Appellant's] entitlement towards sex, callousness towards victims," and "it sounds like [Appellant] wanted what he wanted and he didn't care how he got it." Dr. Gillen opined that Appellant's personality disorder traits and control had improved while he was incarcerated but he still had "some degree of eight of [the seventeen known risk factors]." (TT, pp. 311, 315-330; R., pp. 280, 284-299).

Based on his review of the records, the Static risk assessments, his collateral interviews and interview of Appellant, and his personal experience, Dr. Gillen opined to a reasonable degree of psychological certainty that Appellant did "not have a personality disorder or mental abnormality that impacts his emotions and volitional impairment and that predisposes him to commit those acts, and as a result, [Appellant] does not have a qualifying mental condition, a mental abnormality or personality disorder that makes him likely to commit future acts of sexual violence.," He further opined that "[Appellant] does not meet the criteria as a sexually violent predator." (TT, pp. 331-332; R., pp. 300-301).

On cross-examination, Dr. Gillen acknowledged Appellant still exhibited multiple concerning behaviors directly connected with risk factors, including callousness toward his victims and offense supportive attitudes, and denial and minimization of specific crimes. He also acknowledged Appellant had been disciplined in prison for "stalking" female employees. He stated the female correctional employees he interviewed "made it clear that it was a lingering sort of behavior, certainly something that made them feel uncomfortable," but Dr. Gillen determined there was not "sexual element to it." (TT, pp. 353-363; R., pp. 322-332).

Appellant told Dr. Gillen Appellant he could live with his brother who would help him find employment and be a community support, but Dr. Gillen acknowledged the brother told Dr. Gillen he believed Appellant did not commit the sexual crimes for which he was convicted and the allegations were false, which Dr. Gillen found "significant." Dr. Gillen acknowledged "there are several concerns with both "Appellant's] release plans as well as the nature of his community support," including the fact that the treatment program Appellant said he planned to attend did not exist," which "raised concerns about whether there will be an adequate structured

environment in Georgia" for Appellant. He stated the concerns regarding Appellant's release plans were risk factors for re-offending. (TT, pp. 363-369; R., pp. 332-338).

Dr. Gillen found Appellant had essentially the same dynamic risk factors Dr. Gottfried identified and testified Appellant had made some improvement on certain factors, but he did not "feel that any one of those things is still fully managed." Dr. Gillen further testified he recommended Appellant receive treatment to address the "still actively (sic) risk factors," and "there are still concerns going on with [Appellant]." (TT, pp. 369-381; R., pp. 338-350).

On re-direct examination, Appellant asked Dr. Gillen "if [Appellant] needs to get treatment, does he need to be in a secure facility or could he get outpatient treatment." Dr. Gillen responded "[h]e can certainly get outpatient treatment . . . that's a possibility," but he was not asked to opine on whether Appellant needs treatment or not, and he determined Appellant's personality disorder did not meet the required criteria. (TT, pp. 382-383; R., pp. 351-352).

Judge Holt charged the jury regarding the State's burden to prove beyond a reasonable doubt "that unless confined to a secure facility, [Appellant] is likely to commit another act of sexual violence." He further charged the jury the elements the State had to prove were the existence of a sexually violent offense conviction "and that [Appellant] suffers from a mental abnormality and/or personality disorder, and that makes him likely to engage in acts of sexual violent if not confined in a secure facility for long term control, care and treatment." (TT, pp. 425-426, 429-431; R., pp. 394-395, 398-400).

The jury found Appellant is a sexually violent predator beyond a reasonable doubt. Based on the jury's verdict, Judge Holt committed Appellant to DMH custody for long term control, care, and treatment. (TT, pp. 440-444, Order of Commitment filed June 8, 2022; R., pp. 409-413, 425). This appeal followed.

STANDARD OF REVIEW

The admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a manifest abuse of discretion accompanied by probable prejudice. Glenn v. 3M Co., 440 S.C. 34, 890 S.E.2d 569, 581 (Ct. App. 2023) (internal citations omitted); *see also* Gamble v. Int'l Paper Realty Corp., 323 S.C. 367, 474 S.E.2d 438, 441 (1996) (same); In re Manigo, 389 S.C. 96, 697 S.E.2d 629, 633 (Ct. App. 2010) (same).

ARGUMENT

Judge Holt did not abuse his discretion by excluding evidence regarding outpatient sex offender treatment modalities because the issue before the jury in a SVPA case is whether the person's risk to re-offend sexually is such that he should be confined for long term control, care and treatment, and the specific modalities of treatment, or even whether any treatment is available for the person's particular mental abnormality or personality, is irrelevant and potentially confusing for the jury.

Appellant contends Judge Holt erred by excluding evidence regarding outpatient sex offender treatment because Dr. Gottfried testified about a MUSC outpatient treatment program in the course of her qualification testimony, and the State cross-examined Dr. Gillen about the viability of Appellant's release plan. These contentions are meritless.

Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence". Rule 401, SCRE. Even relevant evidence may be excluded if its probative value is substantially outweighed by a danger it will confuse the issues or mislead the jury. Rule 403, SCRE.

A sexually violent predator is a person who has been "convicted of a sexually violent offense, and suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long term control, care, and treatment." *See* S.C. Code Ann. Sections 44-48-30(1)(a) and (b) (2018); Matter of Snow, 425 S.C. 544, 823 S.E.2d 467, 469 (2019). The statute does not require any evidence regarding what type of treatment the person needs, only proof beyond a reasonable doubt the person has a mental condition that makes him likely to engage in acts of sexual violence if not confined for long term control, care, and treatment.

In a seminal case regarding sexually violent predator commitment statutes, the United States Supreme Court stated "[I]t would be of little value to require treatment as a precondition for civil confinement of the dangerously insane when no acceptable treatment existed," and [t]o conclude otherwise would obligate a State to release certain confined individuals who were both mentally ill and dangerous simply because they could not be treated for their afflictions." Kansas v. Hendricks, 521 U.S. 346, 366 (1997). Based on the analysis in Hendricks, even if the treatment offered to Appellant if committed would be ineffective, it would not preclude Appellant's civil commitment pursuant to the SVPA.

Appellant misrepresents the basis for the State's initial objection, which was specifically to evidence regarding the type of treatment Appellant would receive, and the likelihood of successful treatment, if committed as a sexual predator. Appellant argued he should be able to elicit testimony regarding "generally what type of treatment is used for sex offenders," such as "talk therapy," and "does it need to be treatment in a surfaced (sic) facility or can he get outpatient treatment." Judge Holt's ruling was explicitly focused on the substance of the State's motion by instructing counsel to stay away from "treatment once inside the facility." (TT, pp. 39-44; R., pp. 8-13).

Significantly, both Dr. Gottfried and Dr. Gillen testified they were not asked to opine about the type of treatment Appellant should receive or where he should receive it, only whether he met the criteria for commitment under the SVPA. Dr. Gottfried opined Appellant did meet the criteria and Dr. Gillen, even though he testified Appellant needed treatment, opined Appellant did not meet the statutory criteria. (TT, pp. 192-194, 220-221, 382-383; R., pp. 161-163, 189-190, 351-352).

Even if the availability of outpatient treatment is relevant, Appellant's claim of prejudice because he was unable to inform the jury that **Dr. Gottfried** provided "intensive" outpatient treatment is a classic smoke and mirrors argument. Dr. Gottfried testified before the jury that she provides individual sex offender treatment to people on federal probation, and that MUSC has an "intensive outpatient treatment program for individuals who sexually harm." (TT, p. 114; R., p. 83). Then, Dr. Gillen testified before the jury, without objection, that "[Appellant] can certainly get outpatient treatment," and [t]hat's certainly a possibility." (TT, p. 382; R., p. 351).

Thus, the jury knew Dr. Gottfried provided individual and outpatient sex offender treatment, and that outpatient treatment was a possibility for Appellant. Any inquiries regarding the specific modalities Dr. Gottfried uses, or how they might be applicable specifically to treat Appellant, would require rank speculation and potentially confuse or mislead the jury, especially given both experts' testimony they did not reach any opinions regarding treatment.

Appellant's claim that he was unable "to tell the jury his plan for not reoffending" is misleading and equally unavailing. Both Dr. Gottfried and Dr. Gillen testified about Appellant's plan to enter a program established by Sheriff Victor Hill in Georgia, which never existed. Appellant then testified he planned to go to "Jump Start," which is a ministry program that would help him find a place to live and a job and he would stay there at least six months, but he did not know if he had been accepted to that program. (TT, pp. 394-398; R., pp. 363-367). Thus, the jury knew about Appellant's "plan for not reoffending," and Appellant merely makes a conclusory assertion of prejudice.

The jury was expressly instructed several times that a verdict for commitment required it to find beyond a reasonable doubt Appellant has a mental abnormality and/or a personality disorder that makes him likely to engage in acts of sexual violence if not **confined in a secure**

facility for long term control, care, and treatment. Both experts testified Appellant has a personality disorder, and one testified he also has a paraphilic disorder. Dr. Gottfried opined that Appellant's paraphilic and personality disorders make him likely to engage in acts of sexual violence if not confined for control, care, and treatment. Dr. Gillen opined Appellant's personality disorder was not the cause of his sexual offenses, and while Appellant did need treatment to address his risk factors, he did not meet the criteria for commitment under the SVPA.

As in every case involving "dueling experts," the jury was able to make credibility determinations and accept or reject any or all of each expert's testimony. In determining Appellant is a sexually violent predator as defined by the SVPA, the jury necessarily determined beyond a reasonable doubt that Appellant should be confined for long term control, care, and treatment.

Appellant attempts to couch the issue as simply one of inpatient versus outpatient treatment, but Appellant sought to go beyond inpatient treatment versus the possibility of outpatient treatment for Appellant. Rather, he wanted to get into specific treatment modalities, which may or may not be appropriate for Appellant's treatment needs. Evidence regarding what treatment modalities are used in sex offender treatment, inpatient or outpatient, is simply irrelevant to the issues before the jury in a SVPA case, and has the potential to confuse and mislead the jury by imposing an additional element regarding types of treatment that the State must prove beyond a reasonable doubt. Judge Holt did not abuse his discretion in excluding testimony regarding general or specific modalities of sex offender treatment, and Appellant's commitment pursuant to the SVPA should be affirmed.

CONCLUSION

Based on the foregoing reasons, the State respectfully submits the Court should affirm the circuit court ruling and Appellant's civil commitment as a sexually violent predator pursuant to the SVPA.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 20214, Order from the South Carolina Supreme Court entitled, "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.

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