

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

**Jan 06 2023**

**SC Court of Appeals**

Appeal from Sumter County

Honorable George M. McFaddin, Circuit Court Judge

IN THE MATTER OF THE CARE AND  
TREATMENT OF JAMES GREGORY YOUNGER,

APPELLANT.

APPELLATE CASE NO. 2021-000537

RECORD ON APPEAL

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ATTORNEYS FOR RESPONDENT

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7. SBI 10 – Case Identification Report.pdf (identifying information for six individuals in case 2009-01588 dated June 16, 2015);
- b. 7/15/2015:
  1. 2009-01588-0001.PDF (Request for investigative assistance from the Burlington Police Department dated June 10, 2009);
  2. 2009-01588-0002.PDF (Crime Scene Search of Activity of Apartment of S. G. dated June 16, 2009);
  3. 2009-01588-0003\_SBI-11A\_ATTACHMENT.PDF (handwritten notes);
  4. 2009-01588-0003.PDF ;
  5. 2009-01588-0004.PDF (interview of T.C. on June 17, 2009);
  6. 2009-01588-0005.PDF (Interview of T.S. on June 17, 2009);
  7. 2009-01588-0006.PDF (Interview of A.C. on June 17, 2009);
  8. 2009-01588-0007.PDF (Interview of K.W. on June 18, 2009);
  9. 2009-01588-0008.PDF (interview of S.M. on June 16, 2009);
  10. 2009-01588-0009.PDF (interview of N.N. with T.N. present on June 18, 2009);
  11. 2009-01588-00010\_SBP-11A\_ATTACHMENT.PDF (General Court of Justice, Superior Court Division, Alamance County, Order Authorizing Pen Register/Trap and Trace and Information Pursuant to 18 USC 3123 dated July 21, 2009 and Application for Order Authorizing Installation and Monitoring of a Pen Register and/or Trap and Trace Device and for the Production of Records and Other Information Pursuant to 18 USC 3123/2703(d) dated July 21, 2009);
  12. 2009-01588-00010.PDF;
  13. 2009-01588-00011.PDF (Execution of Search Warrant at George Mastrogianakis residence on August 4, 2009);
  14. 2009-01588-00012\_SBI-11A\_ATTACHMENT.PDF (handwritten notes);
  15. 2009-01588-00012.PDF;
  16. 2009-01588-00013.PDF (Interview of William Lane Foushee dated August 19, 2009);
  17. 2009-01588-00014.PDF (Interview of N.N. and T.N. with J.N. present on August 2, 2009);
  18. 2009-01588-00015\_SBI-11A\_ATTACHMENT.PDF (Alamance Search Warrant issued on August 4, 2009 and executed on August 11, 2009; Application for Search Warrant dated August 4, 2009; Mapquest directions; General Court of Justice, Superior Court Division, Davidson County Inventory of Items Seized Pursuant to Search; Floor plan);
  19. 2009-01588-00015.PDF (Crime Scene Search Activity of Mr. Younger's residence on August 4, 2009);
  20. 2009-01588-00016.PDF (Preview Examination of Digital Media between August 7 and August 27, 2009);
  21. 2009-01588-00017\_SBI-11A\_ATTACHMENT.PDF (Seized Cellular Telephone Analysis Worksheet dated August 7, 2009 and handwritten notes);
  22. 2009-01588-00017.PDF;

23. 2009-01588-00018\_SBI-11A\_ATTACHMENT.PDF (Copy of Burlington Police Department Narrative from Police to Police "P2P" Date Sharing Provided by Ossi);
24. 2009-01588-00018.PDF;
25. 2009-01588-00019\_SBI-11A\_ATTACHMENT.PDF (Criminal History of James Gregory Younger, W/M/DOB: 08/09/1970);
26. 2009-01588-00019.PDF;
27. 2009-01588-00020\_SBI-11A\_ATTACHMENT.PDF (Examination Report of James Gregory Younger's Cellular Telephone dated August 7, 2009);
28. 2009-01588-00020.PDF;
29. 2009-01588-00021.PDF (Interview of Mr. Younger on August 18, 2009);
30. 2009-01588-0022\_SBI-11A\_ATTACHMENT.PDF (Accurint Law Enforcement Report for James Gregory Younger, White Male, Date of Birth [REDACTED] 1970 dated June 24, 2009);
31. 2009-01588-00022.PDF;
32. 2009-01588-00023\_SBI-11A\_ATTACHMENT.PDF (NCSBI Administrative Subpoena for Verizon Wireless Custodian of Records dated August 3, 2009; Return of records for prepaid phone registered to S.G. );
33. 2009-01588-00023.PDF;
34. 2009-01588-00024\_SBI-11A\_ATTACHMENT.PDF (Alamance County Warrant for Arrest 09CR057238 for Computer Trespass issued September 21, 2009);
35. 2009-01588-00024.PDF;
36. 2009-01588-00025\_SBI-11A\_ATTACHMENT.PDF (Accurint Law Enforcement Report and Driver History Response for George Aristidi Mastrogianakis, White Male, Date of Birth [REDACTED] 1966);
37. 2009-01588-00025.PDF;
38. 2009-01588-00026\_SBI-11A\_ATTACHMENT.PDF (Burlington Police Department Incident/Investigation and Supplemental Reports for case 2009-03017) (S.G. );
39. 2009-01588-00026.PDF;
40. 2009-01588-00027.PDF (receipt of Copy of CD labeled [REDACTED] Ark);
41. 2009-01588-00028.PDF (Review of Activity of Physical Evidence in North Carolina State Bureau of Investigation Custody dated April 29 and 30, 2010);
42. 2009-01588-00030.PDF (Telephone Interviews of K.W. on April 20 and 21, 2010);
43. 2009-01588-00031\_SBI-11A\_ATTACHMENT.PDF (Greensboro Police Department Incident/Investigation and Supplemental Reports for case 2007-0420-339) (K.W. sexual assault);
44. 2009-01588-00031.PDF;
45. 2009-01588-00032\_SBI-11A\_ATTACHMENT.PDF (Greensboro Police Department Incident/Investigation and Supplemental Reports for case 2007-0420-339) (K.W. missing person);
46. 2009-01588-00032.PDF;

## EXHIBIT A

47. 2009-01588-00033\_SBI-11A\_ATTACHMENT.PDF (Forsyth Medical Center Medical Records for K.W. );
48. 2009-01588-00033.PDF;
49. 2009-01588-00034\_SBI-11A\_ATTACHMENT.PDF (Forsyth Medical Center Forensic Nurse Examiner Program Medical Records for K.W.);
50. 2009-01588-00034.PDF;
51. 2009-01588-00035.PDF (Transcript of Alamance County Courtroom Hearing that Occurred on July 20, 2009 regarding a 50-C No-Contact Order Filed by S.G. against Mr. Younger);
52. 2009-01588-00036.PDF (interview of K.W. on May 13, 2010);
53. 2009-01588-00037\_SBI-11A\_ATTACHMENT.PDF (NCSBI Investigative Reports for Mr. Younger dated September 9, 2010);
54. 2009-01588-00037.PDF;
55. 2009-01588-00038.PDF (Review of Evidence and Separation of Evidence Item #2B dated August 20, 2009 and November 2, 2010);
56. 2009-01588-00039.PDF (Review of Evidence and Separation of Evidence Item #2C dated January 21, 2010 and November 2, 2010);
57. 2009-01588-00040\_SBI-11A\_ATTACHMENT.PDF (General Court of Justice, District Court Division, Alamance County Order to Return Seized Property dated August 19, 2010);
58. 2009-01588-00040.PDF (Final Transfer of Evidence Items -- two cellular telephones and two cameras dated November 5, 2010);
59. 2009-01588-00041\_SBI-11A\_ATTACHMENT.PDF (Letter from Howard P. Neumann, Assistant District Attorney, 18<sup>th</sup> Prosecutorial District to North Carolina Attorney General's Office and North Carolina State Bureau of Investigation dated October 27, 2010);
60. 2009-01588-00041.PDF;
61. 2009-01588-00042\_SBI-11A\_ATTACHMENT.PDF (Memorandum from Rob Wilkins, Assistant District Attorney, Randolph County District Attorney's Office, to Detective Denny, Archdale Police Department dated December 14, 2005);
62. 2009-01588-00042.PDF (Investigative activity regarding evidence items seized by the Archdale Police Department dated October 29 2010 and November 1, 2010);
63. 2009-01588-00043\_SBI-11A\_ATTACHMENT.PDF (handwritten notes);
64. 2009-01588-00043.PDF (reference to handwritten notes dated November 1, 2010);
65. 2009-01588-00044\_SBI-11A\_ATTACHMENT.PDF (Letter from Pat Nadolski, District Attorney, Prosecutorial District 15A, to Jim Coman, Senior Deputy Prosecutor, Attorney General of North Carolina, regarding "Request Pursuant to N.C.G.S. 114-11.6 for Special Prosecution: James Gregory Younger Rape Investigations conducted by SBI, dated December 27, 2010);
66. 2009-01588-00044.PDF;

67. 2009-01588-00045\_SBI-11A\_ATTACHMENT.PDF (Letter from J. Douglas Henderson, District Attorney, 18<sup>th</sup> Prosecutorial District, to North Carolina Attorney General's Office and NCSBI, dated February 22, 2011);
68. 2009-01588-00045.PDF;
69. 2009-01588-00046\_SBI-11A\_ATTACHMENT.PDF (Letter from Garland N. Yates, District Attorney, 19B Prosecutorial District, to North Carolina Attorney General's Office and NCSBI, dated February 22, 2011);
70. 2009-01588-00046.PDF;
71. 2009-01588-00047\_SBI-11A\_ATTACHMENT.PDF (Greensboro Police Department Incident/Investigation and Supplemental Reports for case 2011-0113-287, L.T. );
72. 2009-01588-00047.PDF;
73. 2009-01588-00048.PDF (receipt of Greensboro Police Department Incident/Investigation Report for case 2010-1109-162, J.S. harassing phone call complaint);
74. 2009-01588-00049\_SBI-11A\_ATTACHMENT.PDF (Emails from L.T. to Mr. Younger dated January 11, 2011 and March 4, 2011);
75. 2009-01588-00049.PDF;
76. 2009-01588-00050\_SBI-11A\_ATTACHMENT.PDF (North Carolina Department of Health Human Services Controlled Substances Reporting System Report for L.T. on March 1, 2011);
77. 2009-01588-00050.PDF;
78. 2009-01588-00051\_SBI-11A\_ATTACHMENT.PDF (North Carolina Department of Health Human Services Controlled Substances Reporting System Report for Gene Aikens on March 1, 2011);
79. 2009-01588-00051.PDF;
80. 2009-01588-00052.PDF (North Carolina Department of Health Human Services Controlled Substances Reporting System Report for Mr. Younger on March 1, 2011);
81. 2009-01588-00053\_SBI-11A\_ATTACHMENT.PDF (surveillance of the installation of the GPS Tracker installed on the vehicle owned by Mr. Younger on March 2, 2011);
82. 2009-01588-00053.PDF;
83. 2009-01588-00054.PDF (Correction to Evidence Item #23 Description Labeling on March 3, 2011);
84. 2009-01588-00055.PDF (Forensic examination for image and video files on one Gateway laptop (Item#20) conducted by SA R. V. White on February 25, 2011 through March 2, 2011);
85. 2009-01588-00056.PDF (Forensic examination for image and video files on one Sony Cybershot Camera (Item#21) conducted by SA R. V. White on February 25, 2011);
86. 2009-01588-00057.PDF (Surveillance of the retrieval of the GPS Tracker installed on the vehicle owned by Mr. Younger on March 24, 2011);
87. 2009-01588-00058\_SBI-11A\_ATTACHMENT.PDF (Prescription record for Gene Aikens received from Rite Aid on March 8, 2011);

## EXHIBIT A

88. 2009-01588-00058.PDF;
  89. 2009-01588-00059.PDF (Interview of L.T. on February 23, 2011);
  90. 2009-01588-00060.PDF (Interview of L.T. on March 4, 2011);
  91. 2009-01588-00061.PDF (Interview of S.A. on May 19, 2011);
  92. 2009-01588-00062\_SBI-11A\_ATTACHMENT.PDF (Single Party Consent form to tape record phone conversation between L.T. and Sharon Younger, signed by L.T. dated March 4, 2011);
  93. 2009-01588-00063.PDF (Interview of A.S. on July 22, 2011);
  94. 2009-01588-00064.PDF (Interview of R.S. on July 26, 2011);
  95. 2009-01588-00065.PDF (Interview of Gene Aikens on July 25, 2011);
  96. 2009-01588-00066.PDF (Interview of Sharon Younger on July 19, 2011);
  97. 2009-01588-00067\_SBI-11A (Interview) W\_Attachment(s).PDF (Interview of K.M. on August 17, 2011, Sexual Assault Victim Questionnaire, typed narrative);
  98. 2009-01588-00068\_SBI-11A (Search Warrant, Inventory-Seized Prop, Other Related Evidence Activity).PDF (Review of Evidence and Separation of Evidence Items 2A and 2AA dated August 20, 2009 and November 5, 2013);
  99. 2009-01588-00069\_SBI-11A (Crime Scene) W\_Attachment(s).PDF (Crime scene search activity of unit #708, Crossroads Self-Storage, High Point, North Carolina dated November 4, 2014);
  100. 2009-01588-00070\_SBI-11A (Search Warrant, Inventory-Seized Prop, Other Related Evidence Activity).PDF (Crime scene search activity of item #32, one Sentry Brand Portable Safe, Model 6250 dated November 7, 2014);
  101. 2009-01588-00071\_SBI-11A (Agent Notes) W\_Attachment(s).PDF (handwritten notes);
  102. 2009-01588-00072\_SBI-11A (Interview).PDF (Interview of Donald Woody on May 7, 2015);
  103. 2009-01588-00073\_SBI-11A (Interview).PDF (Interview of G.S. on May 8, 2015);
  104. 2009-01588-00074\_SBI-11A (Interview).PDF (Interview of L.R. on May 13, 2015);
  105. 2009-01588-00075\_SBI-11A (Interview).PDF (Interview of C.F. on May 7, 2015);
  106. 2009-01588-00076\_SBI-11A (Communications).PDF (Telephone call to SBI Hotline from M.P. dated May 7, 2015);
  107. 2009-01588-00077\_SBI-11A (Interview).PDF (Interview of Darrick McLean on May 7, 2015);
  108. 2009-01588-00078\_SBI-11A (Communications).PDF (Miscellaneous telephone contacts via SBI hotline dated June 15, 2015);
  109. 2009-01588-9003\_SBI.PDF (Arrest/Physical Description Data in Alamance County dated November 18, 2009);
  110. SBI 10 – Archive Laboratory Information.pdf;
  111. SBI 10 – Case Identification Report.pdf (contact information for six individuals dated June 16, 2015);
- c. 7 15 2015 combined.pdf (739-page document consisting of items in 14.l.b.1-111);

- d. 11 19 2018
1. 2019-01588-0084\_SBI11A (Search Warrant, Inventory-Seized Prop, Other Related Evidence Activity).PDF (Evidence Activity Regarding Items #20, #21, and #22 dated October 18, 2017) (items provided by L.T. and examined on February 25, 2011 given item numbers);
  2. 2019-01588-0085\_SBI11A (Search Warrant, Inventory-Seized Prop, Other Related Evidence Activity).PDF (Evidence Activity Regarding Item #25 assigned item number, recording of phone call between L.T. and Mr. Younger dated March 4, 2011);
  3. 2019-01588-0086\_SBI11A (Mobile Device Extraction).PDF (Forensic Examinations of One Apple Iphone 4S by SA R. V. White on November 12, 2014);
  4. 2019-01588-0087\_SBI11A (Computer Forensic Examinations).PDF (Forensic Examination for Image and Video Files on One Sandisk SD Card 8GB (Item #29) conducted by SA R. V. White on November 12, 2014);
  5. SBI 10 – Archive Laboratory Information.pdf;
  6. SBI 10 – Case Identification Report.pdf (identifying information for six individuals in case 2009-01588 dated June 16, 2015);
- e. 6 18 2019:
1. Documents\_20190624.zip:
    1. 2015-01201\_SBI-19.PDF (Defendant/Suspect Disposition and Closing Report for case 2015-01201 – G.S. dated September 14, 2016;
    2. 2015-01201-Final Package (001).PDF (NCSBI Case Synopsis, handwritten notes, and interviews for G.S. case dated June 30, 2015);
    3. SBI 10 – Case Identification Report (amended).pdf (identifying information for nine individuals in case 2009-01201 dated September 16, 2016);
- f. 7 18 2019:
1. Documents\_20190719.zip:
    1. 2009-01588-0088\_SBI11A (Other Law Enforcement Agency Report) W\_Attachment(s).PDF (Archdale Police Department Incident/Investigation and Supplemental Reports for case 200505596, L.R. );
    2. 2009-01588-0092\_SBI11A (Other Law Enforcement Agency Report) W\_Attachment(s).PDF (Copy of Sumter Police Department Case File 12129527 (87 pages) received June 26, 2019);
    3. SBI 10 – Archive Laboratory Information.pdf;
    4. SBI 10 – Case Identification Report (amended).pdf (contact information for eight individuals dated February 18, 2019);
- g. 08 22 19:
1. 2009-1588-0029.PDF (T.C. Interview on June 17, 2009);
  2. 2009-1588-0062.PDF (Recorded telephone conversation of L.T. and Sharon Younger on March 4, 2011);
- h. 08 23 2019:
1. Documents\_20190826.zip:

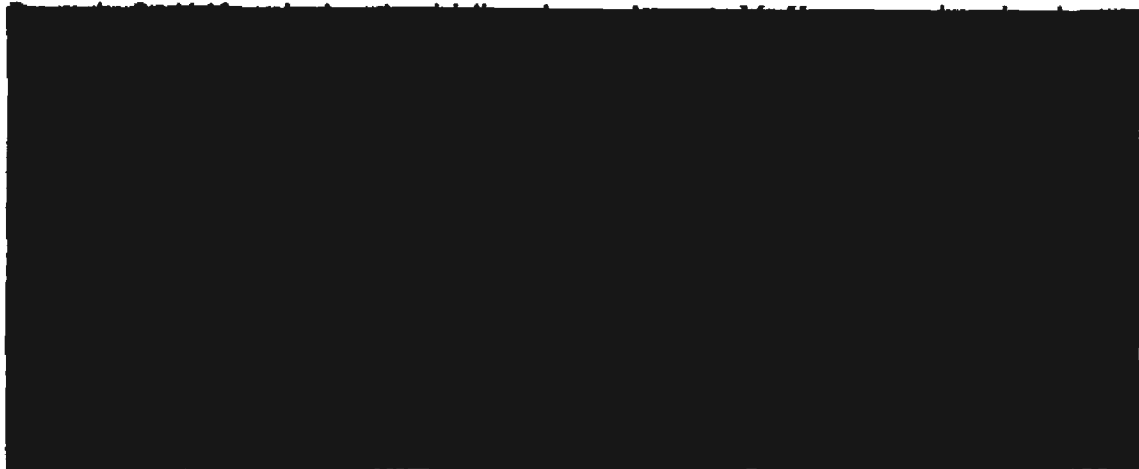
1. 2009-01588-0089\_SB111A (Search Warrant, Inventory-Seized Prop, Other Related Evidence Activity).PDF (Review Activity of Physical Evidence #2A, #2AA, #2B, #2C, and #2D in NCSBI Custody) dated May 23, 2019;
  2. 2009-01588-0090\_SB111A (Search Warrant, Inventory-Seized Prop, Other Related Evidence Activity).PDF (Review Activity of Physical Evidence #2 SBI Custody) dated June 5, 2019;
  3. SBI 10 – Case Identification Report (amended).pdf (identifying information for nine individuals in case 2009-01588 dated August 9, 2019);
2. Edwards car rental.pdf;
13. Uploads:
- A. 2006-00271 AVI MPEG files:
    - a. AVI video clips:
      1. 235 avi items;
    - b. MPEG video files:
      1. 294 mpeg items;
  - B. CD Younger SW computers 12 22 05:
    - a. FRONT SIDE OF STATE SEARCH WARRANT.DOC (unable to open);
    - b. Younger.DOC (unable to open);
  - C. Copy Item #23 Pics Videos Derived from Item #20 3 1 11:
    - a. 2009-01598 Image-Videos:
      1. frame view.html (33 images and 5 videos) (L.T. images of L.T.);
      2. gallery.html (33 images, same as other items in this file);
      3. Pictures-Videos of Interest.html (33 images and 5 videos, same as other items in this file);
      4. Pictures-Videos of Interest\_files:
        1. 33 jpg items (same as other items in this file);
        2. 5 mpg items (same as other items in this file);
      5. toc.html (38 items, same as other items in this file);
    - b. 2009-01598 Laptop Folder Structure (technical details about laptop files, no images):
      1. frame view.html;
      2. gallery.html;
      3. Laptop Folder Structure.html;
      4. toc.html;
  - D. Copy Item #24 Pics Videos Derived from Item #20 3 2 11:
    - a. 2009-01598 Laptop Folder Structure:
      1. frame view.html (unable to open);
      2. gallery.html;
    - b. Reports:
      1. Laptop File Structure technical details about laptop files, no images):
        1. frame view.html;
        2. gallery.html;
        3. Laptop Folder Structure.html;
        4. toc.html;
      2. Laptop Pictures (33 images, same as those in IX.C):

1. frame view.html;
  2. gallery.html;
  3. Laptop Pictures.html;
  4. Laptop Pictures\_files;
    - i. 33 jpg items;
  5. toc.html;
  3. Laptop Videos (5 mpg items, same as those in IX.C):
    1. frame view.html;
    2. gallery.html;
    3. Laptop Videos.html;
    4. Laptop Videos\_files;
      - i. 5 mpg items;
    5. toc.html;
- E. Copy of Item 2AA (unmarked disc):
- a. UN:
    1. Atsirk:
      1. 67 jpg items;
    2. [REDACTED]:
      1. All:
        - i. 42 items;
      2. 32 jpg items;
    3. [REDACTED]:
      1. 47 JPEG items;
      2. 2 AVI movie items;
      3. 1 QT movie item;
      4. 3 THM documents;
    4. [REDACTED]:
      1. 79 JPEG images;
    5. [REDACTED]:
      1. 23 JPEG images;
    6. Hotties:
      1. 1 JPEG image;
      2. 2 AVI movies;
    7. [REDACTED]:
      1. 47 JPEG images;
    8. [REDACTED]:
      1. 2 JPEG images;
    9. MeMe:
      1. 74 JPEG images;
    10. MP:
      1. 145 JPEG images;
    11. [REDACTED]:
      1. 395 JPEG images;
- F. Copy of Item 2B [REDACTED] Ark:
- a. [REDACTED] ark:

1. IO\_files:
  1. One file (fl.js) (text document, computer code);
2. misc items:
  1. 54 items;
  3. 36 items;
- G. Copy of Item 2C Picture It 7.2:
  - a. Pics:
    1. [REDACTED]:
      1. 18 JPEG images, 3 AVI movies;
    2. [REDACTED]:
      1. 6 JPEG images, 1 AVI movie;
    3. L.R.
      1. 8 JPEG images;
    4. [REDACTED]:
      1. 8 JPEG images, 1 AVI movie, 1 THM document;
    5. [REDACTED]:
      1. 14 JPEG images;
- H. Copy of Item 35 HD3 My Pictures:
  - a. My Pictures:
    1. Bristol Race:
      1. 35 JPEG images, 8 AVI movies
    2. Desktop Photo's:
      1. 483 items (primarily JPEG and GIF files);
    3. Family Pics1:
      1. 33 files (containing 1620 JPEG images), 12 JPEG images;
    4. Grand Canyon 7-28-05 8-6-05:
      1. 5 folders (containing 964 JPEG images and 15 Documents), 854 JPEG images;
    5. [REDACTED] Football:
      1. 23 JPEG images;
    6. Misc Pics:
      1. 17 folders (containing 3490 JPEG images, 72 AVI movies, 12 BMP images, 8 GIF images, 6 MPEG movies, 2 Documents, and 1 PowerPoint) and 41 JPEG images;
    7. Panther Ftbl Game:
      1. 21 JPEG images;
    8. School Doc's
      1. 15 JPEG images;
    9. Sept 2005:
      1. 3 Folders containing 4 PowerPoint files, 3 PDF files, 2 GIF images, and 7 JPEG images;
    10. [REDACTED]
      1. 463 JPEG images and 4 AVI movies
    11. YIF

1. 7 folders (containing 296 JPEG images and 1 AVI movie) and 4 JPEG images;
  12. 10 JPEG images, 3 Documents, 1 GIF image, 1 MP3 audio file, and 1 MPEG movie;
- I. Sumter PD Media info:
- a. Info from Victim's phone taken by Sumter PD.xlsx (text messages);
  - b. James Gregory Younger Clear Report.pdf;
  - c. [REDACTED] Info returned from State Law Enforcement division:
    1. Exam Report:
      1. \_vti\_cnf:
        - i. 4 Documents, 2 GIF images, 7 HTML, 1 exe file, and 1 plain text file;
      2. \_vti\_pvt:
        - i. 1 folder (containing 2 HTML files), 11 documents, 2 HTML files, and 1 ico file;
      3. Additional:
        - i. Case Exam History.pdf (SLED Case Examination History for case 7014-0073);
        - ii. Evidence Intake Sheet.pdf (SLED Computer Crime Center SC3C Evidence Intake for Case 7014-0073 dated June 2, 2014);
        - iii. Imaging Sheet-Item 1.pdf (South Carolina Computer Crime Center Forensic Imaging Worksheet for case 7014-0073 dated June 2, 2014);
        - iv. Receipt for Property.PDF (SLED Evidence Submission Receipt dated June 2, 2014 and Receipt for Property dated June 6, 2014);
        - v. Search Warrant.PDF (Sumter County Search Warrant and Affidavit for case 12129527 dated June 1, 2014);
      4. Forensic:
        - i. Item 1-Encase Report;
        - ii. Item 2-Cellebrite Report;
      5. Reports:
        - i. \_vti\_cnf (computer coding files);
        - ii. Examination Report\_files;
        - iii. image;
        - iv. Examination Report.pdf (South Carolina Computer Crime Center report for case 7014-0073 dated June 5, 2014);
      6. 7 Documents, 8 HTML files, 1 Plain Text file, and 2 GIF images;
    2. Report.html;
    3. Report\_files:
      1. 2 xml files and 1 thmx file;
  - d. N.C. Search Warrant digital evidence:
    1. COZAR HYZAR THUMB DRIVE:
      1. Resume Greg\_driver.docx (cover letter and resume);
      2. Resume Greg\_telecomm.docx (cover letter and resume);
    2. MEMOREX THUMB DRIVE:
      1. Resume driver.docx (cover letter and resume);
      2. Resume telecomm.docx (cover letter and resume);

3. SD CARD FROM CANON CAMERA:
    1. 20 JPEG images and 2 AVI movies;
  4. Sims Cards.docx;
  5. TRAVELDRIVE NORTHWESTAHEC DRIVE:
    1. Blackberry:
      - i. 2 folders (containing 21 JPEG images and 1 3GPP movie) and 8 JPEG images;
    2. Form.pdf;
    3. Jo78.jpg;
    4. New Folder:
      - i. 21 JPEG images, 1 Excel file, 2 Word documents, and 1 bmp image;
    5. To whom it may concern.docx;
  - e. Pictures from Search Warrant in N.C.:
    1. 130 JPEG images;
  - f. Victim Photo she took of her healing injury:
    1. 2012-09-22 09.57.26.jpg (bruised anus);
- J. Thumbdrive:
- a. atsirk:
    1. 67 JPEG images;
  - b. FLOW CHART.docx (chart of alleged and confirmed victims);
  - c. Loc Pix:
    1. 25 JPEG images.



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SUMTER )  
 )  
IN THE MATTER OF THE )  
CARE AND TREATMENT OF )  
JAMES GREGORY YOUNGER, )  
 )  
RESPONDENT. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
THIRD JUDICIAL CIRCUIT  
CASE #: 2018-CP-43-01388

RECORDED

2021 MAR 17 AM 7:57

JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

**STATE'S RETURN TO MOTION TO  
EXCLUDE TESTIMONY RELATING TO  
RESPONDENT'S PENDING  
CRIMINAL CHARGES**

Respondent has filed a Motion in Limine to exclude testimony relating to pending charges in North Carolina and other charges that have been alleged against Respondent. The State opposes that motion, and submits the following.

#### **BACKGROUND**

In 2014, Respondent was convicted in Sumter County of Criminal Sexual Conduct (CSC) in the Third Degree, a "sexually violent crime" as defined in the Sexually Violent Predator Act, S.C. Code Ann. Sections 44-48-10, *et seq.* (hereafter, the SVPA). In 2019, he was indicted in two counties in North Carolina for sexual and other offenses against two victims, the four indictments listed in his Motion to Exclude: Three in Guilford County, involved victim "K.L.W.;" and one in Randolph County involved victim "L.M.R." In addition to the victims in the indicted offenses, other victims have contacted law enforcement alleging Respondent sexually assaulted them or engaged in inappropriate sexual behavior with them.

The expert witnesses, Dr. Gehle from the South Carolina Department of Mental Health (DMH) (assisted by Dr. Rachel Carter), and Dr. Gottfried from the Medical University of South Carolina (MUSC), reviewed that information, interviewed Respondent, and submitted reports which included references to the North Carolina allegations. Dr. Gehle concluded Respondent does not meet the statutory requirements for civil commitment. Dr. Gottfried concluded he does

meet the requirements. The matter is currently set for a jury trial on April 19, 2021.

## FIFTH AMENDMENT

### A. NATURE OF THIS MATTER

Pursuant to the SVPA, a sexually violent predator is defined as a person who has (a) been convicted of a sexually violent offense, and (b) suffers from a mental abnormality or a personality disorder that makes the person likely to engage in acts of sexual violence if not confined to a secure facility for long term control, care and treatment. S.C. Code Ann. Section 44-48-30 (1)(a) and (b).

An action under the SVPA is purely civil in nature, and non-punitive. *Kansas v. Hendricks*, 521 U.S. 346, 117 S.Ct. 2072, 138 L.Ed 2d 501 (1997), cited in *Matter of the Care and Treatment of Matthews*, 345 S.C. 638, 550 S.E.2d 311 (2001). In *Matthews*, the Court also rejected alleged violations of the double-jeopardy clause of the Fifth Amendment because of the civil, not criminal, nature of the action.

Similarly, in *Matter of the Care and Treatment of Luckabaugh*, 351 S.C. 122, 568 S.E.2d 738 (2002), the Court rejected multiple challenges to the SVPA, which may have been applicable had it been criminal in nature, including the denial of the (1) substantive Due Process Clause of the United States and South Carolina Constitutions, (2) Procedural Due Process Clause of the United States and South Carolina Constitutions, (3) Equal Protection Clause of the United States and South Carolina Constitutions, and (4) whether there was a violation of the *Ex Post Facto* clause of the South Carolina Constitution.

In a case brought under the SVPA, the ultimate decision rests on the existence of a mental abnormality or a personality disorder and the resulting risk of sexual offending; a determination made by qualified psychologists or psychiatrists who have examined respondent and his record. The Respondent may choose not to testify, or may decline to answer any questions about the North

Carolina indictments if he does testify. In the experience of the undersigned, many respondents have elected not to testify.

In *The Matter of the Care and Treatment of Canupp*, 380 S.C. 611, 671 S.E.2d 614 (Ct. App. 2009), the Court dealt with application of the Fifth Amendment in a sexually violent predator case. The Fifth Amendment to the United States Constitution sets forth the right against self-incrimination: "No person ... shall be compelled in any criminal case to be a witness against himself ..." The South Carolina Constitution provides the same right, at Article I, Section 12. The issue in *Canupp* was whether the respondent there could receive a jury charge that he had a constitutional right to decline to take the witness stand. Reviewing cases declaring the SVPA purely a civil commitment process, the Court rejected the jury charge because the case was not of a criminal nature. The Court noted that a witness in a civil action may decline to answer certain questions if there is a reasonable possibility that the answer would provide information that could be used against the witness in a criminal proceeding, citing *Lefkowitz v. Turley*, 414 U.S. 70, 77-78 (1973) and *Grossheusch v. Cramer*, 377 S.C. 12, 659 S.E.2d 112 (2008). The Court also noted, however, that only a criminal defendant has the right not to take the witness stand altogether.

#### **B. WAIVER**

In the instant case, even if the Fifth Amendment protection against self-incrimination applies, Respondent waived it. Respondent spoke at length with Drs. Gehle and Carter about all the North Carolina indictments, including the factual allegations, matters of intoxication, photographs and so forth. When interviewed by Dr. Gottfried at MUSC about the three Guilford County indictments, however, he declined to talk about them. When she asked him about the Randolph County indictment, he responded at length about the facts of that charge and the issue of consent.

Therefore, to the extent Respondent has a Fifth Amendment right not to incriminate himself as to the North Carolina offenses, he has waived it. Respondent cannot assert innocence, or deny or explain the allegations when he believes it is in his interest, and then assert the Fifth Amendment privilege when it is not. 72 A.L.R.2d 830 (Originally published in 1960) (“There is ample authority supporting the view, expressed in various language, that a party to or other witness in a civil proceeding who testifies to a fact or transaction without invoking his privilege against self-incrimination thereby waives that privilege with respect to the details and particulars of such facts or transaction.”).

### **RULE 403, SCRE**

#### **A. PROBATIVE/PREJUDICE**

In the instant case, the State will present testimony from its expert witness which will identify the criminal acts for which the Respondent was convicted in South Carolina, establish Respondent has at least one qualifying conviction under the SVPA, and identify the details of the offense. Such evidence is admissible and relevant to this case, since it was necessary for Dr. Gottfried to form her expert opinion regarding whether Respondent met the statutory definition of a sexually violent predator, including whether there was a pattern of behavior that would support a mental abnormality/personality disorder diagnosis. Such evidence is highly probative and relevant to her diagnoses, and is not outweighed by any danger of **unfair** prejudice. Rule 403, SCRE.

Generally, all relevant evidence is admissible. Rule 402, SCRE. Evidence is relevant if it tends to establish or make more or less probable the matter in controversy. Rule 401, SCRE; *State v. Frazier*, 357 S.C. 161, 592 S.E.2d 621 (2004). Of course, relevant evidence may be excluded if the danger of **unfair prejudice** substantially outweighs its probative value. Rule 403, SCRE.

While Respondent claims he will be prejudiced by the admission of the North Carolina allegations, which the State does not dispute, he fails to address the only relevant inquiry – is it **unfair** prejudice.

As discussed above, Dr. Gottfried's testimony about the North Carolina criminal allegations goes to the basis of her ultimate opinions regarding Respondent's mental abnormalities/personality disorders and his risk to reoffend sexually if not confined for long term control, care and treatment. Pursuant to Rule 703, SCORE:

**The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. *If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.***

(Emphasis added) *See State v. Cutro*, 365 S.C. 366, 618 S.E. 2d 890 (2005). Dr. Gottfried, and indeed Dr. Gehle, will testify the information regarding an examinee's criminal history is the type of facts or data relied on by experts in the mental health field when conducting a psychosexual evaluation.

As set forth above, the SVPA defines a sexually violent predator as a person who has (a) been convicted of a sexually violent offense, and (b) suffers from a mental abnormality or a personality disorder that makes the person likely to engage in acts of sexual violence if not confined to a secure facility for long term control, care and treatment. S.C. Code Ann. Section 44-48-30 (1)(a), (b). The person's propensity to commit future acts of sexual violence goes to the heart of the SVPA inquiry, and past behavior is the best predictor of future behavior. *See In re Care & Treatment of Beaver*, 372 S.C. 272, 642 S.E.2d 578, 581 (2007) ("likely to engage in acts of sexual violence" means 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."); S.C. Code Ann. Section 44-48-

30(9)(2018). A longstanding pattern of behavior is highly relevant to that inquiry and must not be suppressed merely because it would prejudice Respondent.

#### **B. SEXUAL OFFENSES THAT HAVE NOT RESULTED IN CONVICTIONS**

In *Matter of the Care and Treatment of Ettel*, 377 S.C. 558, 660 S.E.2d 285 (Ct. App. 2008), the Court held that the Circuit Judge properly admitted Dr. Pamela Crawford's testimony regarding Ettel's prior sexual offenses, as well as a prior non-sexual murder conviction. Some of those sexual offenses, though well documented, had not resulted in convictions, as is the situation in the instant case. They were relevant because Dr. Crawford relied on them in evaluating Ettel's need for and likelihood of success in treatment as well as his ability to control his behavior in the future. The Court also observed that Ettel's sexual offenses established "a pattern of behavior of sexual assaults" and this pattern was significant because, as Dr. Crawford stated, "future behavior can only be predicated on past behavior."

In *Matter of the Care and Treatment of Corley*, 353 S.C. 202, 577 S.E.2d 451 (2003), the Supreme Court held that the probative value of the details underlying the Respondent's Assault and Battery of a High and Aggravated Nature (ABHAN) and CSC convictions, as presented in the indictments, outweighed any danger of unfair prejudice, for purposes of the SVPA. Both the State's expert, Dr. Donna Schwartz-Watts (now Maddox), and Corley's expert, Dr. Harold Morgan, diagnosed Corley with depression and antisocial personality disorder, and both experts addressed Respondent's past drug use. Corley attempted to stipulate to the previous convictions, and keep out the ABHAN and CSC indictments and the underlying details behind those crimes. Noting the admission of evidence lies in the sound discretion of the trial judge, and observing the requirements of Rules 401 and 403, SCRE, the Court held that past criminal history is directly relevant to establishing whether a person is a sexually violent predator as defined in S.C. Code

Ann. Section 44-48-30(1). Accordingly, the State was not required to accept Corley's stipulation.

The State also sought to prove that Corley's likelihood to re-offend was based in part on the fact his previous convictions were similar to one another. The testimony of the State's expert illustrated why the evidence regarding the details of the offenses were directly relevant to the ultimate issue of the case. Dr. Schwartz-Watts testified it was important if a person's past crimes were similar in nature, such as similar sex, race, and age of the victims. The Court held that the details underlying the crimes presented in the indictments were not unduly prejudicial, under Rule 403, SCRE, and were properly admitted into evidence.

Prior offenses that did not result in convictions were addressed by the Court of Appeals in *Matter of the Care and Treatment of White*, 486 S.E.2d 492 (Ct. App. 2007). Noting that "offense" was not defined in the SVPA, the Court determined that the term's customary and usual meaning was instructive in ascertaining the legislature's intent. "Offense" is commonly defined as "a violation of the law; a crime, often a minor one." *Black's Law Dictionary* 885 (7th Ed. 2000). Further, "the terms 'crime,' 'offense,' and 'criminal offense' are all said to be synonymous, and ordinarily used interchangeably." 22 C.J.S. *Criminal Law* Section 3 (2007). Distinguished from a crime or offense, the Court found that a conviction is "[t]he act or process of judicially finding someone guilty of a crime [or] [t]he judgment. . . that a person is guilty of a crime." *Black's Law Dictionary* 271 (7th Ed. 2000). It followed that while a conviction could not occur without the commission of an offense, an offense could occur without necessarily resulting in a conviction. As such, both convictions and offenses not resulting in convictions can be considered under the SVPA based on the term's usual and customary meaning. Because the legislature either failed to limit or was silent on whether offenses could include only convictions, the Court held that the legislature intended to include *both convictions and offenses not resulting in convictions*. Had the

legislature intended for that term to be defined narrowly, it easily could have inserted limiting language, and the fact no such limitation was provided in the statute clearly indicates the legislature intended the term “offense” to be broadly applied.

Further, the Court noted our SVPA was modeled after Kansas' Sexually Violent Predator Act; accordingly Kansas' treatment of this matter was illustrative. *Matthews*, 550 S.E.2d at 316 (stating South Carolina's SVPA was based on Kansas' Sexually Violent Predator Act). In *Matter of Hay*, the defendant challenged the introduction of prior uncharged conduct at his trial for civil commitment as a sexually violent predator, claiming it was inadmissible. 263 Kan. 822, 953 P.2d 666, 677 (1998). The Kansas Supreme Court admitted the evidence, finding it was either a necessary element of the charged conduct or relevant, despite its prejudicial nature, to the ultimate issue. *Id.* The Kansas court held: “[E]vidence of prior conduct, *charged and uncharged*, [is] material evidence in [a sexual predator] case.” *Id.* at 678 (emphasis added). In buttressing its conclusion, the Kansas court also stated: “In assessing whether an individual is a sexually violent predator, prior sexual history is *highly probative* of his or her propensity for future violence.” *Id.* (citation omitted; emphasis added).

The South Carolina Court of Appeals therefore found that evidence of White's criminal sexual offenses not resulting in convictions was directly relevant to the circuit court's probable cause determination. The lower court had erred when it had refused to admit White's previous unadjudicated offenses into evidence.

To conclude, *Corley*, *Ettel* and *White* stand for the proposition that details about the underlying sexual offenses, as well as testimony about other sexual and non-sexual convictions or offenses, can reveal a pattern of dangerousness, as they did in this case, and may be submitted to the jury in a case of this nature. Dr. Gottfried's testimony as to the underlying details of the

offenses against the victims Respondent assaulted are relevant under Rule 401, SCRE, and Rule 703, SCRE. Further the evidence is highly probative and not precluded by Rule 403 as unfairly prejudicial. *State v. Cutro, supra*.

Respondent's references to *Matter of Chapman*, 419 S.C. 172, 796 S.E.2d 843 (2017) and *In Re Bilton*, 432 S.C. 157, 851 S.E.2d 442 (S.C. Ct. App. 2020) are misplaced. Certainly both cases, and the law in general regarding sexually violent predator matters, require that persons subject to the SVPA be provided due process. In *Chapman*, however, due process was addressed in the context of a Respondent receiving ineffective assistance of counsel. In *Bilton*, the narrow due process issue involved an expert witness testifying, and thereby acting as a conduit of hearsay, regarding a test performed by a non-testifying expert. Neither of those situations is present here.

## **HEARSAY**

### **A. NOT HEARSAY**

“Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Rule 801(c), SCRE. The testimony at issue in this motion is not “hearsay” because it is not “offered in evidence to prove the truth of the matter asserted.” Dr. Gottfried’s testimony regarding the North Carolina allegations will not be offered to prove the truth of the victim and law enforcement statements, or to prove that Respondent actually committed the crimes. Rather, as discussed above, her testimony regarding the North Carolina allegations will go only to her use of it in forming her opinions regarding Respondent’s pattern of behavior over time, the presence of mental abnormalities/personality disorders, and his risk to reoffend sexually. She will testify Respondent has not been tried or convicted of the alleged crimes, and she will be subject to cross-examination regarding her use of the information in light of that fact.

**B. EXCEPTION TO HEARSAY, RULE 803(4):**

Even if the North Carolina information met the definition of hearsay, it is subject to an exception. Rule 803(4) provides: "Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment; provided, however, that the admissibility of statements made after commencement of the litigation is left to the court's discretion."

Information from law enforcement records relating to charges not resulting in convictions are routinely offered by mental health experts for the purpose of psychological diagnosis, which is particularly significant in SVPA cases. The evidence at issue here qualifies as an exception to hearsay under Rule 803(4), SCRE, and is admissible. Dr. Gottfried will testify that a review and evaluation of supporting documents, such as victim and witness statements and incident reports, and including those from other sexual offenses, were necessary for her to form an opinion as to whether or not Respondent suffers from a mental abnormality or a personality disorder which make him likely to re-offend sexually if not committed for long term care, control and treatment at a secure facility.

**STATIC 99R AND STATIC 2002R CALCULATIONS**

At page 3 of his Motion, Respondent appears to contend that the offenses in the 2019 indictments were used by Dr. Gottfried to calculate his scores on the two actuarial assessments, the Static 99R and Static 2002R. In fact, she did not consider those offenses for purposes of calculating Respondent's score on either assessment. She did include a 2005 charge that was dismissed, but re-indicted in 2019, and the Manual for the Static 99R (rev. 2016; relevant pages attached as EXHIBIT A) allows the consideration of charges even if they

result in a dismissal or a non-conviction.

WHEREFORE, for the reasons stated herein, the State would oppose Respondent's Motion and request that it be denied.

Respectfully submitted,

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March 12, 2021  
Columbia, South Carolina

**Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.***

# PETITIONER'S EXHIBIT

# A

# **Static-99R Coding Rules**

**Revised – 2016**

**Amy Phenix, Yolanda Fernandez, Andrew J. R. Harris,  
Maaïke Helmus, R. Karl Hanson, & David Thornton**

**In-Press Version (14-NOV-2016)**

## Definitions

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### Sex Offence

For the purposes of a Static-99R assessment a sex offence is an officially recorded sexual misbehaviour or criminal behaviour with sexual intent. To be considered a sex offence the sexual misbehaviour must result in some form of criminal justice intervention (e.g., an arrest or charge) or official sanction (e.g., conviction). For people already engaged in the criminal justice system the sexual misbehaviour must be serious enough that individuals could be charged with a sex offence if they were not already under legal sanction. Do not count offences such as failure to register as a sex offender or consenting sex in prison.

Sex offences are scored only from official records and both juvenile and adult offences count. You may not count self-reported offences except under certain limited circumstances; please refer to the Introduction section – sub-section “Self-report and Static-99R.” Self-reported offences that are subsequently discussed in a professional report are not considered “official records.” However, a professional report that mentions a previous charge/conviction can count, if it is considered credible that an official record did/does in fact exist and has been obtained by a professional during a previous contact (e.g., if juvenile criminal records are no longer available, but a previous probation report mentions accessing that record and notes a charge or conviction).

An offence need not be called “sexual” in its legal title or definition for a charge or conviction to be considered a sex offence. Charges or convictions that are explicitly for sexual assaults, or for the sexual abuse of children, are counted as sex offences on Static-99R, regardless of the offender’s motive. Offences that directly involve illegal sexual behaviour are counted as sex offences even when the legal process has led to a “non-sexual” charge or conviction. An example of this would be where an offender is charged with or pleads guilty to a Break and Enter but police reports indicate the offender’s intent was to steal underwear to use for fetishistic purposes, or the offender is convicted of Disorderly Conduct for approaching a child and making sexual comments.

In addition, offences that involve non-sexual behaviour are counted as sex offences if they had a sexual motive and are part of the same continuous event. For example, consider the case of a man who strangles a woman to death as part of a sexual act but only gets charged with manslaughter. In this case the manslaughter charge would still be considered a sex offence. Similarly, consider a man who strangles a woman to gain sexual compliance but only gets charged with assault; this assault charge would still be considered a sex offence. Further examples of this kind include convictions for murder where there was a sexual component to the crime (perhaps a rape preceding the killing), kidnapping where the kidnapping took place but the planned sexual assault was interrupted before it could occur, assaults “pled down” from sexual assaults, and credible threats that are specific to a sex offence (e.g., ‘if you don’t do as I say, I will rape you’).

Note, however, that not all charges and convictions that are part of the sentencing occasion (see definition on pages 28 to 37) for a sex offence will count as sexual. To count them as sexual, they should be part of the sexual motivation of the offence, or clearly part of the commission of the sex offence. For example, an offender is convicted of Breaking and Entering, Theft, and Rape, and the offence was that he broke into a house, stole some items, and also sexually assaulted the resident. In this example, the Breaking and Entering and Theft were not part of the sex offence and would not be counted as sex offence charges or convictions. If the offender was also convicted of Forcible Confinement for keeping the victim in the

**Suspended Sentences**

In Canada, a suspended sentence counts as a conviction.

**Charges**

Anything that counts as a conviction or sentencing date also counts as a charge (see above for examples). In addition, the sections below outline circumstances that count only as a charge (they cannot be counted as a conviction or sentencing date). Note that the only item that counts 'charges' is prior sex offences, so in the sections below, these situations are only applicable for sex offences.

The following count as equivalent to a charge:

- Arrests (if the offender knows a warrant has been issued for his arrest, this counts as an arrest even if the offender flees the jurisdiction before he can be arrested)
- Charges not resulting in convictions (e.g., where there is an acquittal, or charges are withdrawn, dismissed, or stayed). This includes municipal citations for sexually motivated offences.
- Convictions subsequently overturned on appeal
- Parole and probation violations (they may also sometimes count as convictions; see pages 29 to 31)

**Acquittals**

Acquittals count as charges. The reason that acquittals are scored this way is based upon a research study completed in England that found that men acquitted of rape were more likely to be convicted of sex offences in the follow-up period than men who had been found guilty (with equal times at risk) (Soothill et al., 1980).

**Convictions Overturned on Appeal**

Convictions that are subsequently overturned on appeal are considered a charge, but not a conviction or sentencing date.

**Dismissals**

Being charged with an offence, but subsequently having the charge dismissed, counts as a charge.

**Institutional Rules Violations (e.g., Prison Misconducts)**

See pages 26 to 27 for further discussion of the circumstances under which institutional rules violations can count as a charge.

**Loss of Institutional Time Credits (e.g., Worktime Credits)**

Generally, "worktime credit" or "institutional time credits" means credit towards (time off) a prisoner's sentence for satisfactory performance in work, training, or education programs. Any prisoner who accumulates "worktime credit" may be denied or may forfeit the credit for failure or refusal to perform assigned, ordered, or directed work or for receiving a serious disciplinary offence. Loss of worktime or institutional time credit for sexual misbehaviour may count as a charge.

**Not Guilty**

A finding of "not guilty" counts as a charge.

STATE OF SOUTH CAROLINA **CORDELL** IN THE COURT OF COMMON PLEAS  
COUNTY OF SUMTER 2021 APR 13 3 PM THIRD JUDICIAL CIRCUIT  
CASE #: 2018-CP-43-01388

IN THE MATTER OF THE **JAMES C. CAMPBELL**  
CARE AND TREATMENTS **CLERK OF COURT**  
**SUMTER COUNTY, S.C.**

**JAMES GREGORY YOUNGER,** ) **ORDER DENYING MOTION TO**  
 ) **EXCLUDE TESTIMONY RELATING TO**  
 ) **RESPONDENT'S PENDING**  
RESPONDENT. ) **CRIMINAL CHARGES**

This is a pending matter brought under the Sexually Violent Predator Act, S.C. Code Ann. Sections 44-48-10, *et seq.* (hereafter, the Act).

Respondent filed a Motion in Limine to exclude testimony relating to pending charges in North Carolina and other charges that have been alleged against Respondent. The State filed a Return opposing that motion, and a hearing was held in the Sumter County Court of Common Pleas on March 30, 2021. Present for the State were James G. Bogle, Jr and Christopher S. Runyan from the Attorney General's Office, and for the Respondent, who was present, his attorney James K. Falk.

Testimony was taken from Dr. Marie Gehle, of the Department of Mental Health, who had been appointed by the court to evaluate Respondent pursuant to a probable cause hearing under the Act, and Dr. Emily Gottfried from MUSC, who was retained by the State to do a second evaluation, as allowed by the Act. Introduced into evidence were the Static 99R and Static 2002R assessments prepared by each witness.

After careful consideration of the Motion and the Return, the testimony and the exhibits, the Court denies the Motion to Exclude. The following findings are made:

1. In 2014 Respondent was convicted in Sumter County of Criminal Sexual Conduct in the Third Degree, a "sexually violent" offense as defined in the Act. In 2019, he was indicted

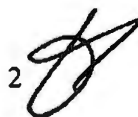


in North Carolina for sexual and other offenses against two victims, three indictments in Guilford County, and one in Randolph County. In addition to the victims in the indicted offenses, other victims have come forward alleging Respondent sexually assaulted them or engaged in inappropriate or unlawful sexual behavior with them.

2. Dr. Gehle and Dr. Gottfried reviewed that information, interviewed Respondent, conducted assessments, and submitted reports which included references to the North Carolina allegations. Dr. Gehle concluded Respondent did not meet the statutory requirements for civil commitment as a sexually violent predator. Dr. Gottfried concluded he did meet the requirements.

**FIFTH AMENDMENT AND DUE PROCESS:**

3. Pursuant to the Act, a sexually violent predator is defined as a person who has (a) been convicted of a sexually violent offense, and (b) suffers from a mental abnormality or a personality disorder that makes the person likely to engage in acts of sexual violence if not confined to a secure facility for long term control, care and treatment. S.C. Code Ann. Section 44-48-30 (1)(a) and (b).
4. An action under the Act is purely civil in nature, and non-punitive. *Kansas v. Hendricks*, 521 U.S. 346, 117 S.Ct. 2072, 138 L.Ed 2d 501 (1997), cited in *Matter of the Care and Treatment of Matthews*, 345 S.C. 638, 550 S.E.2d 311 (2001). In *Matthews*, the Court also rejected alleged violations of the double-jeopardy clause of the Fifth Amendment because of the civil, not criminal, nature of the action. And in *Matter of the Care and Treatment of Luckabaugh*, 351 S.C. 122, 568 S.E.2d 738 (2002), the Court rejected multiple challenges to the Act, which may have been applicable had it been criminal in nature, including but not limited to whether there was a violation of the *Ex Post Facto* clause of the South

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Carolina Constitution.

5. In *The Matter of the Care and Treatment of Canupp*, 380 S.C. 611, 671 S.E.2d 614 (Ct. App. 2009), the Court of Appeals dealt with application of the Fifth Amendment. The Fifth Amendment to the United States Constitution sets forth the right against self-incrimination: "No person ... shall be compelled in any criminal case to be a witness against himself ..." The South Carolina Constitution provides the same right, at Article I, Section 12. The issue in *Canupp* was whether the respondent there could receive a jury charge that he had a constitutional right to decline to take the witness stand. The Court rejected the charge because the case was not of a criminal nature. The Court noted that a witness in a civil action may decline to answer certain questions if there is a reasonable possibility that the answer would provide information that could be used against the witness in a criminal proceeding, citing *Lefkowitz v. Turley*, 414 U.S. 70, 77-78 (1973) and *Grossheusch v. Cramer*, 377 S.C. 12, 659 S.E.2d 112 (2008). The Court also noted, however, that only a criminal defendant had the right not to take the witness stand altogether.
6. In the instant case, even if the Fifth Amendment protection against self-incrimination applied, it would appear Respondent waived it. Respondent was advised by Dr. Gehle of the North Carolina warrants and indictments, including the factual allegations. He responded to her questions about the underlying incidents. When interviewed by Dr. Gottfried about the three Guilford County indictments, however, he declined to talk about them. When asked about the Randolph County indictment, he responded. Dr. Gottfried testified that prior to each session with Respondent, for testing or being interviewed, he reviewed and signed a multiple page consent form, which disclosed the limits of

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confidentially, including that a report would be issued to the Attorney General's Office. Therefore, to the extent Respondent has a Fifth Amendment right not to incriminate himself as to the North Carolina offenses, he has waived it.

7. Significantly, in a similar situation the Court of Appeals held that the Family Court's refusal to hold a Department of Social Services removal action in abeyance, pending the resolution of a related General Sessions criminal case, was not error, and did not deprive the person of his equal protection or due process rights. *South Carolina Department of Social Services v. Walter*, 369 S.C. 384, 631 S.F.2d 913 (2006).

**RULE 403, SCRE:**

8. The State will present testimony from Dr. Gottfried which will identify the criminal acts for which the Respondent was convicted in South Carolina, and identify the details of the offense. Such evidence is admissible and relevant to this case, since it was necessary for Dr. Gottfried to form her expert opinion regarding whether Respondent met the statutory definition of a sexually violent predator, especially whether there was a pattern of behavior that would support a mental abnormality/personality disorder diagnosis. Such evidence is highly probative and relevant to her diagnoses, and is not outweighed by any danger of unfair prejudice. Rule 403, SCRE.
9. Relevant evidence may be excluded if the danger of unfair prejudice substantially outweighs its probative value. Rule 403, SCRE. While Respondent claims he will be prejudiced by the admission of the North Carolina allegations, he fails to address the only relevant inquiry – is it *unfair* prejudice. Dr. Gottfried's testimony about the North Carolina criminal allegations goes to the basis of her ultimate opinions regarding Respondent's mental abnormalities/personality disorders and his risk to reoffend sexually if not confined

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for long term control, care and treatment. Pursuant to Rule 703, SCRE:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. *If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.*

(Emphasis added) *See State v. Cutro*, 365 S.C. 366, 618 S.E. 2d 890 (2005). Dr. Gottfried, and indeed Dr. Gehle, will testify the information regarding an examinee's criminal history is the type of facts or data relied on by experts in the mental health field when conducting a psychosexual evaluation under the Act.

10. Under the Act, the person's propensity to commit future acts of sexual violence goes to the heart of the inquiry, and past behavior is the best predictor of future behavior. *In re Care & Treatment of Beaver*, 372 S.C. 272, 642 S.E.2d 578, 581 (2007) ("likely to engage in acts of sexual violence" means 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."). A longstanding pattern of behavior is highly relevant to that inquiry and must not be suppressed merely because it would prejudice Respondent.
11. In *Matter of the Care and Treatment of Ettel*, 377 S.C. 558, 660 S.E.2d 285 (Ct. App. 2008), the Court held that the Circuit Judge properly admitted Dr. Pamela Crawford's testimony regarding Ettel's prior sexual offenses, as well as a prior non-sexual murder conviction. Some of those sexual offenses, though well documented, had not resulted in convictions, as is the situation in the instant case. They were relevant because Dr. Crawford relied on them in evaluating Ettel's need for and likelihood of success in treatment as well as his ability to control his behavior in the future. The Court also observed that Ettel's sexual offenses established "a pattern of behavior of sexual assaults" and this pattern was

  
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significant because, as Dr. Crawford stated, “future behavior can only be predicated on past behavior.” *Ettel*, 377 S.C. at 563, 660 S.E.2d at 288. Further, in *Matter of the Care and Treatment of Corley*, 353 S.C. 202, 577 S.E.2d 451 (2003), the Supreme Court held that the probative value of the details underlying the Respondent’s Assault and Battery of a High and Aggravated Nature (ABHAN) and Criminal Sexual Conduct (CSC) convictions, as presented in the indictments, outweighed any danger of prejudice. Corley had attempted to stipulate to the previous convictions, and keep out the ABHAN and CSC indictments and the underlying details behind those crimes. Noting the admission of evidence lies in the sound discretion of the trial judge, and observing the requirements of Rules 401 and 403, SCRE, the Court held that past criminal history is directly relevant to establishing whether a person is a sexually violent predator as defined in the Act and the State was not required to accept Corley’s stipulation. The State also sought to prove that Corley’s likelihood to re-offend was based in part on the fact his previous convictions were similar to one another. Dr. Schwartz-Watts testified it was important if a person’s past crimes were similar in nature, such as similar sex, race, and age of the victims. The Court held that the details underlying the crimes presented in the indictments were not unduly prejudicial, under Rule 403, SCRE, and were properly admitted into evidence.

12. Finally, prior offenses that did not result in convictions were addressed in *Matter of the Care and Treatment of White*, 375 S.C. 1, 649 S.E.2d 172 (Ct. App. 2007, cert. den. 2008). Noting that “offense” was not defined in the Act, the Court determined that the term’s customary and usual meaning was instructive in ascertaining the legislature’s intent. The Court noted the terms “crime,” “offense,” and “criminal offense” were all said to be synonymous, and ordinarily used interchangeably. 22 C.J.S. *Criminal Law* Section 3

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(2007). Distinguished from a crime or offense, the Court found that a conviction is “[t]he act or process of judicially finding someone guilty of a crime [or] [t]he judgment. . . that a person is guilty of a crime.” *Black's Law Dictionary* 271 (7th Ed. 2000). It followed that while a conviction could not occur without the commission of an offense, an offense could occur without necessarily resulting in a conviction. As such, both convictions and offenses not resulting in convictions can be considered under the Act based on the term's usual and customary meaning. Because the legislature either failed to limit or was silent on whether offenses could include only convictions, the Court held that the legislature intended to include *both convictions and offenses not resulting in convictions*. The Court noted our Act was modeled after Kansas' Sexually Violent Predator Act, and so Kansas' treatment of this matter was illustrative. In *Matter of Hay*, 263 Kan. 822, 953 P.2d 666, 677 (1998), a commitment trial, the Kansas Supreme Court admitted such evidence, finding it was either a necessary element of the charged conduct or relevant, despite its prejudicial nature, to the ultimate issue. The Kansas court held: “[E]vidence of prior conduct, *charged and uncharged*, [is] material evidence in [a sexual predator] case.” *Id.* at 678 (emphasis added). In buttressing its conclusion, the Kansas court also stated: “In assessing whether an individual is a sexually violent predator, prior sexual history is *highly probative* of his or her propensity for future violence.” *Id.* (citation omitted; emphasis added). The South Carolina Court of Appeals therefore found that evidence of White's criminal sexual offenses not resulting in convictions was directly relevant to the circuit court's probable cause determination. *Corley, Ettel and White* stand for the proposition that details about the underlying sexual offenses, as well as testimony about other sexual and non-sexual convictions or offenses, can reveal a pattern of dangerousness, and may be submitted to

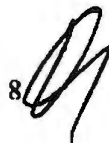
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the jury in a case of this nature. It is highly probative and not precluded by Rule 403 as unfairly prejudicial.

13. It is important to note that much of the testimony presented by both Dr. Gehle and Dr. Gottfried about how they considered prior offenses, that did not result in convictions, and how they treated that information as it might or might not relate to a pattern of behavior by Respondent, and the weight they gave it, really goes to the weight of their testimony and conclusions, not its admissibility.

#### **HEARSAY**

14. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. The testimony at issue in this Motion is not "hearsay" because it is not "offered in evidence to prove the truth of the matter asserted." Dr. Gottfried's testimony regarding the North Carolina allegations will not be offered to prove the truth of the victim and law enforcement statements, or to prove that Respondent actually committed the crimes. Rather, as discussed above, her testimony will only go to her use of it in forming her opinion regarding Respondent's pattern of behavior over time, the presence of mental abnormalities/personality disorders, and his risk to reoffend sexually.
15. Even if the North Carolina information met the definition of hearsay, it is subject to an exception. Rule 803(4) provides: "Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment; provided, however, that the admissibility of statements made after commencement of the litigation is left to the court's discretion."

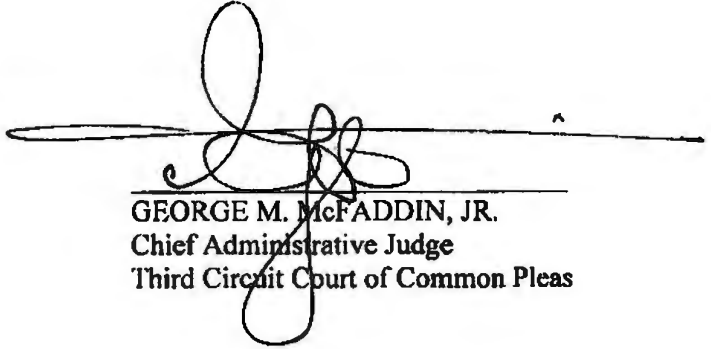
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16. Information from law enforcement records relating to charges not resulting in convictions are routinely offered by mental health experts in cases under the Act, for the purpose of psychological diagnosis. The evidence at issue here qualifies as an exception to hearsay under Rule 803(4), SCRE, and is admissible.

Accordingly, based upon the forgoing,

IT IS HEREBY ORDERED that Respondent's Motion to exclude testimony relating to pending charges in North Carolina and other charges that have been alleged against Respondent be and hereby is denied.

AND IT IS SO ORDERED.



GEORGE M. McFADDIN, JR.  
Chief Administrative Judge  
Third Circuit Court of Common Pleas

April 13, 2021  
Sumter, South Carolina

RECEIVED

MAY 17 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA )  
COUNTY OF SUMTER )  
IN THE MATTER OF THE )  
CARE AND TREATMENT OF: )  
JAMES GREGORY YOUNGER, )  
Respondent )

RECORDED  
2021 APR 20 10 28 PM U.S.  
IN THE COURT OF COMMON PLEAS  
THIRD JUDICIAL CIRCUIT  
CASE #: 2018-CP-43-01388  
JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

CERTIFIED TRUE COPY  
OF ORIGINAL FILED

*James C Campbell*

CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

**ORDER OF COMMITMENT**

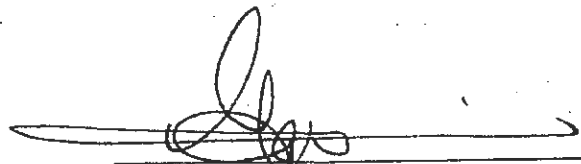
The trial of this case was held in the Sumter County Court of Common Pleas the week of April 19, 2021. A jury of citizens from Sumter County heard this case pursuant to a request for a jury trial filed by the State. James G. Bogle, Jr., and Christopher S. Runyan from the Attorney General's Office represented the State and James K. Falk, Esquire, represented the Respondent. The jury having heard the presentation of the evidence made the following findings of fact pursuant to S. C. Code Ann. Sections 44-48-90 and 44-48-100:


The State has proven beyond a reasonable doubt that Respondent, James Gregory Younger is a sexually violent predator as that term is defined in S. C. Code Ann. Section 44-48-30.

NOW, THEREFORE, IT IS ORDERED THAT:

- (a) Respondent, James Gregory Younger is committed to the South Carolina Department of Mental Health for his long-term control, care and treatment;
- (b) Respondent, James Gregory Younger, is to continue to be detained at the Sumter County Detention Center, and then transported to the secure facility of the Department of Mental Health. The Detention Center or the Sheriff's Department is to transport Respondent on such scheduled date as is coordinated with the Department of Mental Health.

AND IT IS SO ORDERED.

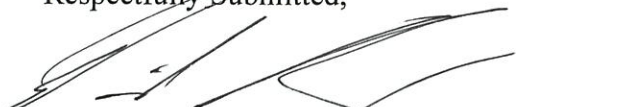
  
GEORGE M. McFADDIN, JR.  
Third Judicial Circuit  
Court of Common Pleas

  
Sumter, South Carolina, 2021

**CERTIFICATE OF COUNSEL FOR APPELLANT**

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



David Alexander  
Appellate Defender

**RECEIVED**

**Jan 06 2023**

**SC Court of Appeals**

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 6th day of January, 2023.



STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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**RECEIVED**

**Jan 06 2023**

**SC Court of Appeals**

Appeal from Sumter County

Honorable George M. McFaddin, Circuit Court Judge

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IN THE MATTER OF THE CARE AND  
TREATMENT OF JAMES GREGORY YOUNGER,

APPELLANT.

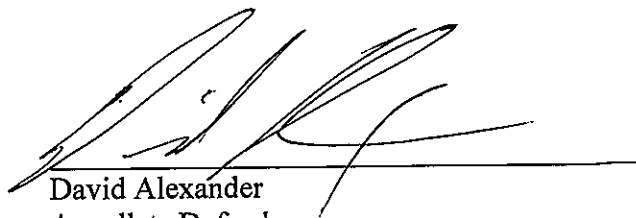
APPELLATE CASE NO. 2021-000537

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CERTIFICATE OF SERVICE

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Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Deborah R.J. Shupe, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 6<sup>th</sup> day of January, 2023.



David Alexander  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

**From:** [Stock, Chris](#)  
**To:** [SC - SHUPE DEBORAH](#); [Sally Ellison](#)  
**Cc:** [Alexander, David](#)  
**Subject:** 2021-000537 In the Matter of the Care and Treatment of James Gregory Younger - Record on Appeal Volume 1 & 2  
**Date:** Friday, January 6, 2023 3:43:00 PM  
**Attachments:** [2021-000537 In the Matter of the Care and Treatment of James Gregory Younger - Record on Appeal Volume 1.pdf](#)  
[2021-000537 In the Matter of the Care and Treatment of James Gregory Younger - Record on Appeal Volume 2.pdf](#)

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Ms. Shupe,

Please find attached for service the Record on Appeal (Volumes 1 & 2) for In the Matter of the Care and Treatment of James Gregory Younger's appeal which will be filed today with the Court of Appeals.

Thank you.

Chris

**Chris Stock**  
Administrative Assistant  
Commission on Indigent Defense  
Appellate Division  
(803) 734-1330