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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable William Seals, Circuit Court Judge
Appellate Case No. 2023-000285

In the Matter of the Care and Treatment
of Joseph Curtis, Jr.,

Appellant.

SUPPLEMENTAL RECORD ON APPEAL

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MS. SHAW: Yes, Your Honor. At this point, we request that we begin the *Council* hearing with respect to Ms. Johnson's motion to bar the evidence of PPG. I am actually prepared to offer Dr. Gottfried first, if the Court would so like to hear from her.

THE COURT: Sure.

DR. EMILY GOTTFRIED

after having been duly sworn, was examined and testified to as follows:

MS. SHAW: And, Your Honor, just as a preliminary matter, as we get Dr. Gottfried seated, I have premarked seven exhibits as Court's 1 through 7. I have a copy up on your bench for you, and I also gave a copy to Ms. Johnson this morning.

THE COURT: Thank you.

MS. SHAW: Thank you.

DIRECT EXAMINATION

BY MS. SHAW:

Q All right. Good afternoon, Dr. Gottfried.

A Good afternoon.

MS. SHAW: Your Honor, would you like me to call the case or are we just back on the record?

THE COURT: What's that?

MS. SHAW: Would Your Honor like me to call the case, or are we just back on the record?

THE COURT: We're back on the record.

MS. SHAW: Thank you.

BY MS. SHAW:

Q Dr. Gottfried, please state your name and spell your last name for the record.

A Sure. It's Emily Gottfried. G-o-t-t-f-r-i-e-d.

Q And by whom are you employed and in what capacity?

A I work at the Medical University in South Carolina in Charleston and work as an associate professor of psychiatry of behavorial sciences, and I'm also the director of our Sexual Behaviors Clinic and Lab.

Q Now, in order to be employed in this capacity, are you required to have certain education, background, and experience?

A Yes.

Q Can you discuss your undergraduate and graduate training?

A Sure. So, I have a bachelor's in psychology from San Diego State University. I then completed a masters in psychology at Columbia University. And then I did another masters along the way of getting my Ph.D. in clinical psychology at Florida State University.

Q And after obtaining your degrees, you pursued further specialized training in your field; correct?

A Yes.

Q And what training was that?

A As part of the requirements to obtain a Ph.D. in clinical psychology, you have to do a one-year 200-hour clinical internship. So I did mine for the Department of State Hospitals in California at Patton State Hospital. And then, after I obtained my Ph.D., I did a post-doctoral fellowship in forensic psychology at the Medical College of Georgia in Augusta in partnership with East Central Regional Hospital.

Q And what was the focus of your training in those fellowships?

A Broadly, forensic psychology.

Q And are you required to have a license to practice psychology as part of your employment with MUSC?

A Yes.

Q And do you possess one?

A Correct.

Q Are you licensed in any other states?

A I am licensed as a psychologist in South Carolina and Georgia.

Q And how long have you held your South Carolina license?

A I believe I got it about the middle of 2015, so about seven and a half years.

Q And have you been working at the SBCL conducting sex offender research since then?

A Since August of 2015.

Q And do you also provide evaluations and treatments for

sex offenders?

A I do.

Q Okay. And do you have any publications, articles, books, or other peer-review literature that you have authored or co-authored?

A Yes.

Q Can you discuss that, please?

A I have 31 peer-reviewed publications. I have, I believe, six book chapters in edited psychology books. And then I have done a lot of presentations, about 65 peer-reviewed presentations at scholarly conferences. And I do, like, invited workshops and presentations and lectures as well.

Q Okay. And approximately how many of those articles and studies and presentations that you've done have to do with penile plethysmography?

A I'd say 10 to 15, including the presentations as well.

Q And how many presentations have you specifically done in PPG work; if you know?

A I'm going to estimate six to seven presentations at, like, a national conference, and then a couple of times a year, I do workshops, lectures for other institutions on sexual behaviors evaluations that also covers PPG.

Q And are you a member of any professional organizations?

A I am.

Q Okay. And what are the domestic ones, the ones based in

the U.S.?

A I'm a member of the Association for the Prevention and Treatment of Sexual Abuse, ATSA. I'm a member of the American Psychological Association. And then I'm part of a number of their subdivisions. So Division 41 is American Psychology and Law. Division 12 is Society for Clinical Psychology, The American Academy of Forensic Sciences, Society for Personality Assessments. There's probably more, but that's a good sampling.

Q And do you hold any leadership roles within any of those organizations?

A I do.

Q And can you tell me about those, please?

A I am on the board of directors for ATSA. So, that's the Association for the Prevention and Treatment for Sexual Abuse. I serve as the research chair, so I sit on the board as the chair of that committee.

I'm the president-elect of the assessment section of Division 12 of the APA, and I finished a term on the executive committee of American Psychology and Law. And then I'm also on the conference planning committee for American Academy of Forensic Sciences.

Q And does the Association for Treatment of Sexual Abusers publish any guidelines regarding the use of PPG?

A Not the PPG per se, but they publish best practices

guidelines on different topics. So -- and the latest is 2014. They published best practices on the evaluation and treatment of men who have sexually offended, and in those guidelines, they discuss PPG.

MS. SHAW: Your Honor, may I approach the witness?

THE COURT: Sure.

MS. SHAW: Thank you.

BY MS. SHAW:

Q All right. Dr. Gottfried, can you please identify what this has been marked as and tell me what it is?

A That's Court's Exhibit 7. And these are the ATSA practice guidelines for the assessment, treatment, and management of male sexual abusers from 2014.

Q And in those guidelines, does the ATSA endorse or in any way support the use of the PPG in sexual offender evaluations?

A Yes. For treatment and evaluations and assessments, they support the responsible use of PPG. They say that it is a good source of information to use as a data point, but then they caution that you would never use it as the sole data point in making a whole list of decisions.

Q Okay. Now, getting back to your qualifications, regardless of your domestic membership and organizations, are you a member of any international organizations?

A I'm a member of an international research group. So that's the International Standardization for Penile

Plethysmography Group, and that includes researchers from the U.S., Canada, the Czech Republic, and the U.K. And then ATSA has international members, and two of them sit on the board. So, it's kind of an international as well.

Q And the International Standardization Committee, what is the mission of that group?

A So, the mission is to really address some of the concerns that have previously been raised over the years about standardization within the PPG.

Q Okay. And we'll discuss that in a little bit.

So, as part of your experience, do you also teach and have you overseen fellows, medical students, and other young psychologists in the course of your duties with the SBCL?

A Yes, that's one of my major duties.

Q And you've trained them?

A Yes.

Q Okay. And what is your primary job function in the context of an SVP case?

A My job function in terms of the evaluation?

Q Correct.

A So, your office -- the Attorney General's office will contact the Sexual Behaviors Clinic and Lab at MUSC and request an independent or second-opinion evaluation. So, in that context, I would request records from your office, review all of those, and then schedule three evaluation dates for the

examinee to come in. They do a battery of psychological tests, they do physiological testing, or PPG, and then the clinical interview ranges usually around five or six hours.

Q And is that your standard protocol in every SVP referral that you are asked to opine on?

A Yes. I get the records. I schedule three dates. Depending -- sometimes we have examinees who can't read or have a head injury, so we might need to add a test or take away a test that they're not able to comprehend, but there's a standard battery that I use.

Q Okay. And you have testified in the state of South Carolina before; correct?

A I have.

Q How many times?

A I believe 40 times.

Q Okay. And have you ever testified in any other states in South Carolina?

A I have testified about four times in Georgia.

Q So, how long have you been performing sex offender psychosexual evaluations in the context of SVP matters?

A For SVP, about -- since 2016, I would say.

Q And do you know how many you have done in total, pre-commitment and second opinions?

A Let me see if I have it split up by pre-commitments. I know that about 54 cases have been referred to me in total

from both the AG's office and Respondent's attorneys. Pre-commitment, I think about 32 have been referred to me.

Q And approximately how many of these do you do per year, just psychosexual evaluations in general?

A I don't know how many I do a year. I do -- it really depends on the referrals. So, from your office, I may do a couple a year to a couple of month. And then I do at least one or two a month for United States Federal Probation. I have a private attorneys, DSS. And in an average year -- sexual behavior? -- maybe 20 to 30.

Q And do you have any non-SVP sex offender evaluations that you do?

A Yes.

Q And what kind of evaluations are those?

A So, through the Sexual Behaviors Clinic and Lab, I have a contact with the United States Federal Probation, so that is for individuals who are being released from federal prison, on probation for sexual offense convictions. So, I do all of their -- the ones who are referred to me in Charleston, all of their evaluations. So we're looking at risk, and we're looking at treatments. So, I do those, and then I set them up for treatment, because we give those services as well.

Q Now, specifically with respect to forensics, you did your post-doctoral fellowship primarily focusing on forensics. Do you have any other specialized training in that area?

A I regularly attend conferences, so I present at a lot of conferences and I like to join the committees in the leadership positions. So, I go to about six conferences a year. So, at those conferences, I do continuing education where I learn about other people's research or take a workshop. So, I think that is the bulk of how I get my continuing education.

Q And do you have any specific areas of research that you are conducting at this point or which you presently have pending peer-review articles?

A Yeah. I do a lot of research. My job is totally clinical, so it kind of waxes and wanes of how much time I have in the office to do it. But I do a lot of research because I like it.

So, my research interests are the accurate assessment of male and female sexual arousal, paraphilic disorders, assessment in general. So, valid, reliable assessment methods across forensic psychology, and feigning.

Q And do you have any articles that are presently under peer review for publication but which are not yet published?

A I think I have about three or four.

Q And do any of them have to do with the PPG?

A No.

Q And, specifically, what PPG system do you use in your office?

A We use the Limestone Technologies.

Q Are you certified to operate that machine?

A Yes. I'm a certified clinical analyst.

Q And is your lab certified?

A Yes.

Q And tell me about the level of certification for your lab.

A So, we're certified as a research lab. That's the highest level of certification that you can obtain from Limestone.

Q And so, do you oversee each PPG and evaluation that's administered in your office?

A I do. So, I do all the evaluations right now in the Sexual Behaviors Clinic and Lab, and then I oversee and interpret. So, I don't currently administer PPG; I have a technician who does that, but I oversee all of those procedures, and then I interpret all the PPGs in the lab.

Q And the tech is under your supervision?

A Correct.

Q And is the tech also certified to operate the machinery?

A Yes.

Q And does that tech do any of the interpretation at all?

A No.

Q Now, describe what a PPG is, please.

A So penile plethysmography is a physiological measure of

male sexual arousal. It's an objective measure where we are measuring changes in blood flow or engorgement/erection of the penis in response to a variety of stimuli. So, we're looking at sexual stimuli that feature consenting adults and then abusive stimuli and then non-sexual neutral trials, and we're comparing the examinee's responses within himself.

So, what that means is we're looking to see if they are aroused by consenting adults, and then relative to arousal, if they also show clinically significant arousal to the abusive trials.

Q And is this a standard test you perform in all of your SVP evaluations?

A I perform it in all the SVP -- any sexual behavior evaluation of an adult man.

Q And why do you use it?

A So, we know that having sexual interest in abusive stimuli -- so paraphilic -- for example, if somebody is sexually aroused to prepubescent children, we know -- and they have offended against prepubescent children, we know that that's a significant risk factor for re-offending.

We also know that people who are undergoing sexual behavior evaluations, especially sexually violent predator ones, have really well-founded motivation for not being totally forthcoming about what they're aroused by. So, we need an objective way to measure it because the literature

suggests that that is a risk factor for sexual recidivism.

Q Okay. And do you use the PPG in any context other than psychosexual behavioral evaluations?

A I don't.

Q Is it used in any other context that you're aware of?

A Other than psychosexual?

Q Yes.

A Yes. So, I mean, related to psychosexual, it's used in a lot in treatment. So, we look to see if -- we're looking at treatment progress. So, if somebody is learning how to control their sexual arousal to abusive stimuli, then we're going to have them implement that treatment, work on it, and then we can do a PPG to see kind of where they are in treatment.

It's also used in the medical general sexual field. So, it's covered by insurance companies. I think BlueShield BlueCross [verbatim] covers it for things like erectile dysfunction, if somebody had a penile implant. There's a lot of literature on the PPG that isn't related to sexual offending, so sexual behavior in general.

MS. SHAW: Your Honor, with that foundation, I would offer Dr. Gottfried as an expert in psychosexual evaluations, forensic and clinical psychology, and specifically as an expert in penile plethysmography.

THE COURT: Any objections?

MS. JOHNSON: Your Honor, I have no objection to her being offered as an expert in forensic psychology.

And, I'm sorry, the other two?

MS. SHAW: Forensic and clinical psychology, psychosexual evaluations, and the PPG.

MS. JOHNSON: Your Honor, that's without objection.

THE COURT: All right.

MS. SHAW: Thank you, Your Honor.

BY MS. SHAW:

Q All right. So how many PPGs have you requested or -- and interpreted in your entire career?

A Let's see, since I was certified, I have ordered 66 PPGs, and I personally interpreted 49.

Q Okay. And let's go back to your training a little bit in how to interpret these tests. You were provided training by Limestone; correct?

A Correct.

Q And you are personally certified as well as your lab being certified for research?

A Yes. My lab is certified, I am certified, and my technician is certified.

Q Now, tell me about the certification process. What topics are covered. Like, what do they teach you and what do they tell you about how to interpret these tests?

A So, Limestone has a certification program that was

established in 2004, and they have trained people from Sexual Violent Predator programs, I think, in New York, California, Missouri, and then other clinicians from Virginia, Texas, Washington, and then also, like, across the world. So, you know, China, Russia, Brazil. So, it's a pretty large training program.

So, in this program, there's an educational portion where you learn the purposes of the certification, why you should be certified before you're interpreting PPG data, including the responsibilities that you have as a clinical analyst, the importance of standardization, use and avoidance of use of the PPG, so when is the PPG appropriate, when is it not appropriate.

We go over the critical PPG research, the basics of PPG, sexual arousal in men. So, we talk about sexual response cycle and other theories of sexual arousal. The course covers the Limestone stimulus materials, including the Real Child Voice stimuli. They go over, like, statistical terminology, *Daubert* criteria regarding the PPG, how to calculate the indices of when you're interpreting a PPG, trace interpretation, indicators of dissimilation or somebody trying to purposely manipulate the test, how to write it up in a report, and then the standardization and certification of the laboratory itself.

Q And that requires that you adhere to certain practices

and protocols when you're administering these tests; correct?

A Correct. To become certified, you have to submit interpretations and tests that you did. So, you do it under supervision first, and then you submit to tests to show your clinical competency.

Q So, basically, you have to be approved by Limestone to be certified?

A Correct. So, you take the class, but that doesn't get you the certification. You have to submit your materials after -- after you've administered -- I believe it's three. So, three PPGs that you've administered and interpreted. You send the identified and it goes through the system, back to Limestone, and they check it, they look at your report, and that is when you actually get certified.

Q And then they verify, basically, that you're doing it correctly?

A Yes.

MS. SHAW: May I approach again, Your Honor?

BY MS. SHAW:

Q Okay. Could you please identify what this document is marked as and tell me what it is?

A That is Court's Exhibit 4, and this is from our lab. It's the Sexual Behaviors Clinic and Lab at the Department of Psychiatry and Behavioral Sciences of the Medical University of South Carolina penile plethysmography administration

instructions.

Q And is that the handbook, essentially, that you use in every PPG?

A Yes. This is our protocol.

Q Okay. So, describe a little bit about that.

A Go through it?

Q No. Just how does it work? What is the procedure before you administer a PPG? How does PPG itself work and what happens when this test is administered?

A Yes. So, we have these administration instructions, which is our standard protocol. And so, even though our tech has been doing PPGs at MUSC since at least 2012, we have these in a binder, and he, for every PPG, has the binder open. He has a checklist that he goes through to make sure that we're doing it in the same way.

So, kind of going through it, he'll sit down with the examinee in a conference room, explain what the test is, give them some information, give them a restroom break, take them into the PPG lab, show them -- he gives them a flexible kind of tape measure or ruler, tells them how to measure the circumference of their penis. He then leaves the room; they do that in private by themselves and give him back the ruler. And then he puts on an instructional video that's standardized with instructions of how they're actually going to place the gauge on themselves. And while they're watching the video in

that room, he's selecting the proper gauge, he's calibrating the gauge.

So, in order to administer a PPG -- like, the software won't even let you start the PPG test until the gauge is properly calibrated, and it has to be calibrated three times and at the same calibration.

Q And that software that does the calibration is embedded software within the system itself; correct? It is not subject to manipulation?

A The soft -- I'm sorry?

Q The calibration software specifically.

A Like, you can't -- there's no way to, like, override it.

Q Okay. That's my question.

So, it's in there, and it must be done before you can begin the test and before you can present stimulus to the examinee; correct?

A Yes. I once tried to show, as an example to a student, something about the PPG, and I couldn't start anything until I calibrated the gauge. It doesn't even let you, like, sample the trials.

Q Okay. So, when you -- and let's just be clear. The individual examinee is never required to stimulate themselves or masturbate before or after taking this test, are they?

A No. The only time they that they are instructed or allowed to touch themselves during the exam is when they're

placing the gauge on themselves. They're then covered up. They're in a room by themselves. Touching it, it's very sensitive. So, any kind of movement on it would mess up the test. And if they masturbated or had -- or ejaculated, the test would be over. So, no, they don't stimulate themselves.

Q Okay. And there's nobody in the room. It's a completely private environment?

A Yes. The tech might come in to hand the gauge or give instructions, but he announces over the intercom before he's coming in. The person is covered up. But while they're listening to the PPG stimuli, they're in there by themselves.

Q Now, specifically with respect to the stim sets, which ones does your lab use?

A We both use the Marshall stimuli sets and the Real Child Voices, or the RCV.

Q And does either one of those stim sets come standard with the equipment?

A The RCV, when you purchase a Limestone PPG system, that's what comes standard with it.

Q And has the Limestone itself ever been peer reviewed?

A Yes.

Q Okay. I'm going to show you what's been marked as Court's 5. Can you tell me what this document is?

A Yes. Those are peer-reviewed publications, so they're manuscripts that come from psychiatric or psychological

journals that undergo the peer-review process, and these are studies where they mentioned in the methods of how they did the study that the stimuli were from the Limestone system.

Q Okay. And the stimuli specifically being referenced in those studies is what? Is it the Real Child Voices, the Marshall, or something else?

A I would have to go through. This is a list of the ones that use the Limestone system, so the RCV comes standard with the Limestone system, but the issue that I testified to before is that, when people are writing up their results, they might describe the stimuli, but most studies don't say, "We used the Real Child Voices" or "We used the Monarch system" or the stimuli. So, these are papers that indicate they used the Limestone technology, the Limestone hardware, PPG, but most studies don't say which stimuli sets they actually used.

Q But the technology itself has been peer reviewed?

A Yes.

Q Okay. And what is the general consensus regarding its reliability?

A Well, these studies are looking at different things, so they might be comparing the Abel Assessment for sexual interest to the PPG, but the ones that are looking at PPG and the studies and the abstracts that have been done on the RCV show that it's reliable -- it's generally reliable and valid.

Q And have there ever been any peer-reviewed studies done

on your lab in particular?

A There have been studies -- manuscripts that have been published in peer-reviewed journals talking about our lab compared to other sexual behavior labs.

Q I'm going to show you a document marked as Court's 6. Is this a list of those studies?

A Yes.

Q And what have those studies found with respect to your administration of this particular test?

A Well, these studies -- I wouldn't say necessarily that the word "found" is how I would describe them. So, there was a 2019 manuscript that was peer reviewed and published in the International Review of Psychiatry journal, and that was an international review of sexual behavior assessment laboratories in Canada, our lab at MUSC, in the Czech Republic, and in Russia, so kind of comparing the different methods that underwent peer review to become published.

And then another one was just comparing our specific PPG laboratory protocols between a Canadian clinic and our clinic. That was published in 2015 in current psychiatry reports. And that's Court's Exhibit 6 that has those.

Q Now, I'm also going to show you a document marked as Court's Exhibit 2. Can you tell me what that is?

A Yes. This is a list of peer-reviewed articles on penile plethysmography in general.

Q And how many are approximately on that list?

A I didn't number them. Plethysmography? About 32.

Q And what -- and you're familiar with all those articles; correct?

A I am.

Q You have read them all?

A I have read most of them or read the abstracts or read the results section. I have read, if not the whole thing, the results of all of them.

Q Okay. And what do the articles generally conclude regarding reliability of the PPG and its use in psychosexual evaluations?

A The literature generally supports the use of PPG. So, there have been studies that show that it can accurately discriminate individuals who have sexually offended against children and are sexually aroused by children from individuals who have offended against adults or not offended against anybody.

There are studies looking at the sensitivity and specificity, the rule of dissimilation. The PPG has been around for a long time. In the 1950s is when it really started to be used in sexual behavior, looking at offending behaviors. So, it's been the subject of lots of articles for -- since the 1950s.

Q Okay. And there are other stimulus sets that are in use;

correct?

A Yes.

Q And do you know of any off the top of your head?

A I know of one through Monarch.

Q And do you use that one?

A I don't.

Q Okay. And have the RCV and the Marshall both been subjected to peer review as shown by that document?

A Yes, but these are not actual specific to the Marshall and the RCV.

Q But do they take those two stim sets into account in the studies?

A Yes. There are studies on the Marshall and RCV, but just clarifying that it's not all of these. These are all on PPG in general.

Q Okay. But there are some specific studies?

A Yes.

Q Okay. And what have those studies found, if you know?

A Let's see. So, some data that we have collected and looked at -- and with colleagues in Canada -- there was a study where they compared the Real Child Voices with the sexual behavior clinic at the Royal Institute for Mental Health in Ottawa, and they looked to see differences between the RCV and the -- called the SVC standard stimuli; that's what they also use in Canada. So, looking at differences

between individuals who offended against children on the child stimuli versus people who have offended against adults.

A study that we presented out of my lab that we're writing up for publication compared the RCV, the Marshall, and the Abel Assessment for sexual interest. We found that the Marshall and the RCV were really comparable in their significant results but that, if an examinee was going to produce clinically significant results on the PPG, it was more likely to be on the Real Child Voices than the Marshall. And then also looking at differences between sexual interest as measured by the Abel Assessment for sexual interest versus sexual arousal as measured by the PPG.

Q Now, how many labs currently have a Limestone system, that you're aware of?

A I think -- when I have talked to Limestone several times, I believe it's 50 to 100. I'm not sure why it's such a big range, but they basically told me between 50 and 100 labs in North America have purchased a Limestone system.

Q And so, has the PPG been generally accepted outside the field of psychology, say, in the medical field?

A Yes.

Q I'm going to show you a document marked Court's 1. Can you please identify that?

A Yes. This is a document from Blue Cross/Blue Shield of Texas. I guess it's called, "Plethysmography Modalities

Considered Medically Necessary."

Q So, can you turn to the -- I believe it's the third page. Can you please read that and tell me what it says?

A So, this is on the third page. It says, "Penile plethysmography. A noninvasive test for measuring the variation in the volume of the penis and in the amount of blood present or passing through it. Refer to the medical policy on evaluation of impotence for coverage information."

Q So, based on that information, does it appear that BlueCross BlueShield has accepted this and will cover it?

A Yes. It says, "of Texas," so yes.

Q Okay. And the PPG, as you testified, is used around the world; correct?

A Yes.

Q And different countries do have different standards; correct?

A Yes.

Q Now, as to your lab, you use the same standards and same procedure, same calibration every time you use this?

A Yes.

Q Does that ever vary?

A Not in my lab.

Q Now, how do you interpret the test results themselves?

A So, when you're interpreting a PPG, the first thing you do, I guess when you establish the lab -- because we use the

same cut score no matter the reason we're administering a PPG.

So, you first have to identify the cut score. So, what makes a result clinically significant? What makes it arousal? Where do you cut it to say, okay, this is arousal versus this is not arousal?

We use a really conservative cut score in my lab. The legislature suggests that you want to look at percent of a full erection. So, 2.5 millimeters of change from where the person started at baseline at the beginning of the trial for the PPG to their maximum arousal, when you subtract that, the circumference change, 10 percent of a full erection would be 2.5 millimeters of change.

We use the cut score of five to be conservative to overcome some potential issues that you could have if you used not a conservative cut score with the PPG.

Q Okay. So, you use 5 millimeters of change basically to avoid false positives; is that fair to say?

A Yes.

Q Can you discuss that for a minute?

A Yes. So, for any test -- any test is going to have an error rate, and you need to balance sensitivity with specificity. So, you want to have a test -- well, I guess it depends on what the outcome of the test is.

So, for example, with the PPG, if somebody is aroused by children, you ideally want the PPG results then to show that

they're aroused by children. You don't want PPG results of somebody who is not aroused by children to show that they are.

So, you want to balance the specificity and sensitivity so that you are not incorrectly identifying somebody who is not aroused by children as being aroused by them on the PPG.

So, we want to -- we would rather miss somebody than say somebody has arousal that they don't actually have, and we would rather miss them because it's just one data point that we use in the lab.

Q And these are high-stakes evaluations; correct?

A Yes. For an SVP, I think it should be as conservative as possible, especially because it's not the only thing that we're looking at. We would never make a diagnosis or make any clinical recommendations based on PPG results. So it's just one data point.

Q Okay. And so, how do you determine what cut score to use? Is it the purpose of the evaluation or something else?

A I -- we have five, based on the literature, and we have stuck with that. So, I can understand and potentially support other labs using different cut scores, like, based on the purpose of what they're using it for. So, if you're using it in treatment and nobody is ever going to see the results but the person undergoing treatment, sure, you can say one millimeter of change is arousal, but that would be really irresponsible to do in an evaluation that's going to court or

that other people are going to see at all.

So, I mean, I think that you could choose what you wanted, but -- depending on the source, but to be standard, we use five for everything, even for treatment evaluations for federal probation.

Q Okay. And so, there's been some discussion about the consistency and the revocability of results of the data -- for the results in the data across labs. So, if another lab was using the same cut score as you do and you presented them with your raw data for interpretation, would that lab come back with the same results as you did?

A If they were using the same cut score, yes.

Q Okay. If they were not using the same cut score, maybe a lower one, the results would be different; correct?

A Yes. A cut score of five is -- a lot of people will get, like, 15 or 20 millimeters of change. So, then, no matter what your cut score is, all of the labs are going to say that's clinically significant arousal. But if it was something lower, then, if we use the same cut score, our interpretation would be the same.

Q Okay. So, in your training, are you taught to interpret potential attempts to manipulate the test? Is that part of the Limestone certification training?

A It is.

Q And what do you look for when you are evaluating whether

there was attempted manipulation?

A So, we have some countermeasures that we use, and we use those to look at manipulation but we also use them to look at the validity of the test itself. So, when a person is undergoing a PPG, not only are we measuring changes in blood flow to the penis, but we're also looking at movement. So, they're sitting on a pad that is recording their movement so we can see if they are clinching or squirming or flexing. Anything that's causing movement, we can see that in the physiological data when we're interpreting the PPG.

They also are wearing a respiratory strap, so we can monitor their breathing. We can see if they're holding their breath, if their breathing becomes really shallow. And when you see multiple trials where somebody is squirming a lot, despite the technician reminding them to try to remain still during that two-minute, three-minute period where they're listening to the audio, that can become evidence of dissimilation.

And then, there's other types of dissimilation that we can see in the data as well when you can see from the data that the person is starting to become aroused or have increased blood flow, and then, it immediately, like, shifts down to baseline. We can see that those are attempts as well.

Q Okay. And did you observe any of those attempts or have you ever?

A Yes.

Q Okay. And you're familiar with what to look for to identify whether someone is attempting to manipulate the test?

A Yes.

Q And you're able to account for that when you interpret the data?

A Yes.

Q Thank you.

Now, I want to show you this book. Do you know what it is?

A Yes.

Q What is it?

A That's the Diagnostic and Statistic Manual, Version 5, Text Revision, from the American Psychiatric Association.

Q Okay. And when was this published?

A 2022.

Q And when was the DSM-5, on which its based, published?

A 2013.

Q So, tell me about what the DSM-5-TR is.

A That is the diagnostic manual that we use. So, "we" being anybody who can diagnose mental illness; so, psychiatrist, social worker, psychologist.

It has a list of all the psychiatric illnesses recognized by the American Psychiatric Association and then all of their criteria for meeting that diagnosis.

Q So, for lack of a better word, is this sort of the bible for psychologists and evaluators who are potentially making diagnosis?

A Yes. Not just evaluators. It has a forensic cautionary note in there, but anybody who is a making a diagnosis for treatment purposes, for any purpose.

Q So this is the book you use?

A Yes.

Q Does this book reference the PPG at all?

A Yes.

Q Can you tell me what it says? Do you happen to have your copy with you?

A I do.

Q And I'll just refer you to page 795.

A So, on page 795, this is in the paraphilic disorder section, specifically talking about pedophilic disorders sections, speaking -- talking about pedophilic disorder under the subheading, "Diagnostic markers." It says, "Psychophysiological measures of sexual interest may sometimes be useful when an individual's history suggests the possible presence of pedophilic disorder but the individual denies strong or preferential attraction to children. The most thoroughly researched and longest use of such measures is penile plethysmography, although the sensitivity and specificity of diagnosis may vary across sites, which

frequently use different stimuli procedures and scoring."

Q Okay. Thank you.

So, the DSM supports the responsible use of the PPG?

A Yes.

Q And are you familiar with this book, "Evaluation of Sexually Violent Predators" by Whitt and Conroy?

A Yes.

Q And what year was that book published?

A 2009.

Q And what does that book say about the use of the PPG?

A So, it notes that psychophysiological assessment methods are used in sexual behavior evaluations, that the one with the longest research history is the PPG; however, it specifically highlights a paper that was published by Bill Marshall in 2006.

Q And let me just clarify. Bill Marshall is the individual who invented the Marshall set; correct?

A He made the Marshall set, correct.

So, in 2006, Bill Marshall noted some problems with the PPG. And so, the authors, Whitt and Conroy, in this best practices book, said that the problems with commonly used psychophysiological measures presently limit their use in SVP evaluations.

Q And since 2009 when that book was published, has it been updated?

A The book -- to my knowledge, it hasn't.

Q Okay. And are you familiar with the 2014 article by Marshall as well?

A Yes.

Q And are you familiar with what that article says?

A Yes.

Q And is it referenced in your document which highlights all the PPG peer-reviewed studies?

A It should be.

Q What does that article say from 2014?

A So, he continues to note some of the issues with standardization, but he notes, quote, [as read] "Despite these reservations, PPG remains the best approach to establishing a sex offender's sexual interests, and so long as the resultant data are interpreted with caution, they can use -- they can use fully contribute to risk assessment and to defining targets for treatment."

He also note, quote, "Despite these reservations, it is possible to attempt integration of data from across sites. What this integration reveals is that the results of child molesters appear reasonably consistent in showing that some, but far from all, of these offenders display deviant arousal that requires treatment intervention. Deviant interest displayed by child molesters is also a moderate predictor of future risk to re-offend, so the value of PPG assessments with

these offenders appears to be clear."

He said, "Overall, the data suggests some value to PPG assessments but caution in the interpretation of results is recommended."

Q And that was as of 2014?

A That was published in 2014.

Q Okay. Are you familiar with the 2019 -- well, actually, back up.

What's a meta study?

A A meta-analysis?

Q Meta-analysis. Excuse me.

A A meta-analysis is where a researcher -- group of researchers will take a number of research studies on the same topic and statistically combine them. So, take all of the participants from all of those studies. So, it could be 30,000, 100,000 people from 20 or 30 studies and statistically combine them to examine the contract that they were measuring to give you a better, fuller picture using a lot more data.

Q So, basically, it's a big data analysis --

A Yes.

Q -- on a particular topic?

A Yes.

Q Okay. Are you familiar with the 2019 study by McPhail, et al.?

A Yes.

Q And what does -- tell me about that study.

A So this was a huge meta-analysis. He had all of these different groups of people. So, let me find the number.

So, some examples of a group that he had in his meta-analysis was 4,700 men who had offended against children; 2,085 people who had offended against adults and not children at all; 541 men who sexually recidivated; 2,186 men who didn't recidivate; and then, I don't have the number listed but also a large group of men who didn't offend at all, so non-offenders.

Q And what were the finding of that analysis?

A There was a lot of findings. It was a really big meta-analysis, but some of them --

Q Specifically as it relates to the PPG.

A The whole thing is about PPG. So, it was combining data from all these different PPG studies of looking at men and studies using child stimuli. And so, it indicated that the PPG differentiated men who offended against children from all other comparison groups. So, people who had offended against adults, people who had never offended, and non-offenders.

So, that was one of the major findings. They had a really good discriminative validity. And then it also compared different modalities of the stimuli. So, audio only, slide plus audio, video, and it had some really interesting findings related to that, of different presentations of

stimuli.

Q But does it make any overall conclusions about the reliability and general use of the PPG?

A I mean, the results show that it has really good discriminative ability. I don't recall, quote, what the discussion says, but it's -- I think such an important, big study that has a ton of data that had really promising results.

Q And was that meta-analysis subject to peer review?

A Yes.

Q And it was accepted?

A Yes.

Q And, actually, I just want to back you up for one moment. Let's just make some differentiations regarding peer review. You are, in fact, a peer reviewer; correct?

A I am.

Q Approximately how many publications or associations do you do this for?

A So, I am a peer reviewer for 32 journals -- 32 different journals, and then I am a peer reviewer for three different national conferences or professional organizations. I review their conference submissions. And then, I'm on the editorial board of three or four journals.

Q And there are different types of peer review; correct? There's publication, there's submission, then there's other

things. Can you describe about that?

A Yes. So, for a manuscript -- if you conducted a study and you want to publish the findings in a scientific journal, you would submit that for publication, then the journal's editorial board would send it out for peer review. So, they would pick experts in your field that you were studying and send it to them for their review of your methods, your results, how you wrote it up. And then, depending on the journal, there's different criteria that you're rated on.

So, you might -- there's lots of different things that it could be: The appropriateness of the methods, whether it should be sent for an independent statistical analysis, like, how novel it is, if the readership of the journal is going to be interested in it. So, lots of different things that you're rating it on.

And so that's one peer review. And so then the editor would collect all of those comments, put them together, and send them to the authors who, then, the authors could choose to revise and resubmit it if they wanted to.

Q Or could the article be accepted? I mean, there would either be comments and required revisions or acceptance or something else?

A It's typically never accepted. I have had one paper out of 31 or 32 that was accepted with minor revisions. Peer reviewers always have something to add, so it's never

accepted. That would be really unlikely. So it's either you get a revise and resubmit or you get a rejection.

Q Okay. And, to the best of your knowledge, the McPhail study from 2019 was not rejected?

A It was published in -- I believe it's an assessment.

Q Okay. Thank you.

So, I'm going to show you what's been marked as Court's 3. Are you familiar with this book?

A Yes.

Q Okay. This is Chapter 15 from this book. Can you tell me what that is, please?

A Yes. So, this is the -- a photocopy of the cover: "Sexually Violent Predators: A Clinical Science Handbook." That was edited by William O'Donohue and Daniel Bromberg.

Q And what is that chapter, Chapter 15?

A Chapter 15 was written by Dr. Joseph Claude. The title is, "The Use of Penile Plethysmography in SVP Assessment and Treatment Decision-making."

Q And what does that chapter say about the use of PPG in sexually violent predators -- specifically sexually violent predator evaluations?

A So, Dr. Claude discusses that using PPG is both important in both the evaluation and treatment of individuals convicted of sexual offenses and being considered for civil commitment either under the Sexually Violent Predator Act or Sexually

Dangerous Persons Act.

He noted that, because the identification of what he calls deviant sexual arousal has been found by multiple researchers to be a significant predictor of sexual offense recidivism, that penile plethysmography has a role in both diagnosis and treatment decisions for SVP.

Q So, again, he recommends the responsible use of the PPG in this context?

A He does. He's an expert in PPG.

Q Okay. And what date was that written, or time frame? What year?

A 2019.

Q Now, in your opinion, is the use of the PPG as a valid data point in the context of a larger evaluation both ethical and recommended?

A Yes.

Q And is that how you use it?

A Yes.

Q Okay. And, in your opinion, based on your particularized knowledge of this test, your experience, expertise in this field, and this particular methodology of using this test, is it your opinion that it is generally reliable?

A Yes.

Q Is it your opinion that it is generally accepted in the psychological community?

A Yes. A lot of people in the psychological community don't do anything with sexual behavior, but people who are experts in sexual behavior, study sexual behavior, yes, it's generally accepted.

Q And what about in the larger medical community as a valid medical test?

A Yes. I talk to physicians in urology about doing a study. They're really interested in that, because they do the penile implants. They have patients with erectile dysfunction. So, it's definitely used in other areas.

Q And it's approved by the FDA?

A Yes.

Q Is it approved by Medicare and Medicaid?

A Yes. And FDA -- the Limestone system is approved by the FDA.

Q And specifically, BlueCross and BlueShield also does cover it?

A For insurance, yes.

Q Okay. Thank you.

Now, in Mr. Curtis's case, when did you do his PPG examination?

A So, I know that we tried -- Mr. Curtis had an injury, so he came for his PPG and indicated he was in a lot of pain, so he did not have a PPG that day. That was June 17th of 2022.

He came for his PPG. He was cooperative, but he had

previously fallen and couldn't sit that long, didn't want to sit that long. He was in a lot of pain. So it was scheduled, and he completed his PPG on June 27th of 2022.

Q And was his examination interpretable?

A Yes.

Q And did you, in fact, interpret it?

A I did.

Q Okay. You personally did?

A Yes.

Q And was that PPG examination, the results, the sole basis for your opinion in this matter?

A Absolutely not.

Q And you would not use it as such; correct?

A I would not.

MS. SHAW: Your Honor, may I have a moment just to confer with my colleague?

(Pause in the proceedings.)

BY MS. SHAW:

Q Just one more question about the peer-review process. Can you explain the abstract process to me?

A Yes. So, I also serve as a peer reviewer for three national organizations. So, when -- most professional scientific organizations have an annual conference, and they open a portal or accept abstracts to present your research findings at their conference. And that undergoes a

peer-review process as well for a couple of different reasons.

So, typically, they get a lot of submissions, many more than they have room in their program. So, they have to have a process or a way to determine the best presentations that they're going to accept. And then, also, because this is essentially representing their organization, it undergoes a peer-review process to make sure this isn't something that's going to be way out of the scope of the people who are attending the conference or something that's going to be really sensational. It undergoes a peer-review process to make sure that -- the same process as when you submit a journal article.

So, when I am doing peer review for an organization, I'm also rating them on criteria. That's usually, like, how novel is this, how much would this interest people who are coming to this conference, the members of our organization. So, I -- that undergoes peer review as well.

Q Okay. Thank you. I have nothing further. Please answer any questions Ms. Johnson may have.

CROSS-EXAMINATION

BY MS. JOHNSON:

Q Dr. Gottfried, refresh my memory: How long have you been using PPGs in your Sexual Violent Offender evaluations?

A Since 2016, but I finished my certification in 2018.

Q Okay. So, you have been certified to use them since

2018?

A Yes. So, prior to 2018, Greg Dwyer, who was the former director of the lab before I took that position, he did all that.

Q And by "lab," do you mean MUSC? The lab at MUSC?

A Sexual Behaviors Clinic and Lab at MUSC, yes.

Q And so it's under the purview of MUSC, the Sexual Behaviors Lab; correct?

A Correct.

Q And is this -- this lab, is it for commercial purposes or just for research purposes? How does that work?

A It's not commercial. So, it's -- the Sexual Behaviors Clinic and Lab of MUSC, the clinic is where we do the clinical evaluations. So, Sexually Violent Predator, federal probation. And then "lab" is kind of referring to our research lab and the PPG lab, so it's a clinic and lab.

Q Okay. But you-all are paid for your services; right?

A Yes.

Q Yes. Okay.

And does the Attorney General's Office or does the State pay you for your services?

A Yes.

Q And by "your services," I mean, are you paid to do -- to use the PPG in evaluations?

A They don't pay me to use the PPG. They pay MUSC a flat

rate to conduct the independent evaluation, the second opinion.

Q But you said you have never done these evaluations without the PPG? Is that what your testimony was earlier?

A Yes.

Q And so, when they're paying for an evaluation, they're paying for an evaluation that includes the PPG; correct?

A Yes.

Q Yes.

A Because that's my protocol. They don't pick -- they don't get to pick which tests.

Q And it's upwards of almost $6,000; am I correct?

A It's 5,600.

Q Every time?

A Yes.

Q Yes. Okay.

And how many do you do a year?

A So, that is really hard to tell. So, I have been referred since 2016, 54 from both Respondent's attorneys, but primarily, the Attorney General's Office. There are some years that I might do maybe six in the whole year, and I can say right now, I'm doing a lot at the same time. So, sometimes I do a couple of month, and sometimes, I do a couple a year.

Q How about on average? What would you say you have done

since 2018, since you've been certified, every year on an average?

A Maybe ten.

Q Ten. Okay.

A Give or take.

Q So -- and you say that you don't actually do the -- administer the PPG; correct?

A I can do the administration, but I have a technician who works in our sleep lab; he does it.

Q In this particular case with Mr. Curtis, you did not administer the PPG?

A Correct.

Q Okay. But what you do is you look at and interpret the results; right?

A I do the analysis.

Q The analysis. Okay.

So, when you do your analysis, do you make sure that the test was administered correctly?

A Yes.

Q Okay. And how do you do that?

A So, I go through the technician's checklist. So, he follows our protocol that he has in the binder. He goes through a checklist and checks everything that he does. He records the temperature, the humidity. That's standard. We have forms for how he does that. And then, when I'm doing the

analysis, I have the physiological PPG data on the computer where I'm going through each trial second by second and looking at all the data. Plus, he takes notes while he is stopping and starting the trials. He's looking at the physiological data. He's not making interpretations. But if somebody sneezed or they asked to take a restroom break, he's making notes of all that.

Q And did he make any notes in Mr. Curtis's case?

A I'm sure he did. He makes notes on everything.

Q Okay. Did you reference any of those notes in your report?

A I typically don't unless it's something unusual. So, if somebody coughs or if somebody says -- I don't know what his notes say, but if he said the first time, "My back hurts," and then reference the notes that said he was in pain, so the PPG was discontinued and rescheduled.

Q And so when you say it's something unusual, you mean something unusual to you when it comes to making your assessment?

A I wouldn't say unusual to me. Something uncommon.

Q Uncommon. But to you, in particular?

A To me, right.

Q So, for example, I might be more interested in some of the notes that he had for a different purpose, but you wouldn't have noted that necessarily because, for you, you're

more worried about your assessment and the notes for your assessment?

A I wouldn't say worried about the assessment. People cough, they clear their throat. He notes that because I'm looking at the movement and the breathing data. I would note that regardless. But he will write if somebody sneezes or coughs. That's not unusual to me, because you see that in most PPGs.

Q But that, of course, is not reflected in your report for Mr. Curtis; right?

A Correct.

Q And you say you oversee -- who is the technician?

A His name is Joe Secondary.

Q Joe Secondary. Okay.

And you oversee his work? He's your assistant there?

A He's our technician.

Q Your technician.

And so you oversee him. So, when he gives a test, are you standing there while he gives the test?

A I check in with him, but I don't -- I'm not looking over his shoulder the whole time.

Q And when you say you check in with him, what does that mean?

A Typically, I go in the lab, ask him how it's going, if he needs anything. He -- usually, he will come if anything is --

somebody isn't cooperative or they say their back hurts, he'll come to my office, we'll talk about it. So I'm there, but I'm not sitting in the lab with him the whole time.

Q So, you're there in the building, but you're not necessarily in the lab?

A Correct.

Q And if you are in the lab, you're not there the entire time that he gives the test --

A No, I'm not.

Q -- that he conducts this test.

A Correct.

Q And so, in Mr. Curtis's case, were you there in the lab at any time?

A I'm not sure. I mean, I can't testify that I was. I recall him and I talking about the back pain, and I recall being in my office, but I can't say 100 percent that I was. It might have been a phone call.

Q And you said you recall talking to him about the back pain. What do you mean by "him"? Do you mean Mr. Curtis, or do you mean Mr. Secondary?

A Mr. Secondary.

Q Okay. And in Mr. Curtis's case, did you review the charts that Mr. Secondary would have done? Did you actually review those charts that would suggest he did -- he took all the proper protocols?

A Yes.

Q Yes. Okay.

But you didn't put those in your -- in your evaluation either?

A Put...

Q The reviewed -- what you reviewed from Mr. Secondary. You didn't put those in your evaluation?

A In my report, no.

Q In your evaluation report. No. Okay.

And so -- and do you know whether Mr. Secondary -- how long he was in the room with Mr. Curtis?

A I do.

Q You do.

And how long was he in the room with Mr. Curtis?

A Can I reference that?

Q Yes, of course.

A So, on June 17th, he was -- it says 30 minutes. And June 27th, it says three hours.

Q That he was -- are you talking about he was in the room with Mr. Curtis?

A Oh, no. I'm sorry. This is from our time long of how long the PPG lasted.

Q Okay.

A So I don't -- I might know that on his notes. I'm not sure that I have the notes, though.

Q So, for the purposes of today and what we're going to introduce to the Court, you do not know how long he was actually in the room with Mr. Curtis while this was being done?

A I don't. It's typically a minute. It's something that he definitely notes that I can look up, but I don't know offhand. I couldn't testify how many seconds -- minutes and seconds it was.

Q You can't -- I mean, for today's purpose, even if it was 20 minutes, an hour, you couldn't testify as to that today; correct? You don't have that information?

MS. SHAW: Your Honor, objection. Asked and answered.

THE COURT: Yeah, I think you can move on.

MS. JOHNSON: I'll move forward, Your Honor.

BY MS. JOHNSON:

Q So, as it relates to Mr. Secondary's work with the PPG, you did receive a call at some point that Mr. Curtis was in pain and was having difficulty taking the evaluation?

A I recall talking to Mr. Secondary in person, but like I said, I don't have it in front of me that it was in person. So, I had a conversation with him that I think was in person but could have been on the phone.

Q Well, I'm less concerned about the person, but you did have a conversation with him of him experiencing some pain that prevented him from doing the PPG?

A Yes.

Q Okay. Do you remember when that was?

A What date it was?

Q Yes.

A It was June 17th.

Q June 17th was the date he first attempted the PPG?

A Correct.

Q And refresh my memory: Why couldn't he do it?

A He reportedly fell out of the transport van or when he was getting out of the transport van prior to that.

Q And then, later on, you had him come back and do the PPG?

A Correct.

Q How long after?

A Ten days.

Q Ten days.

Was he walking at the time?

A I don't recall.

Q And so, you don't recall even if he was in a wheelchair or anything like that?

A I do recall that, when they brought him from J. Reuben Long, the officers asked to use our wheelchair. I do recall him using our wheelchair.

Q Is the person's health not important to -- for the PPG -- for the results of conducting a PPG so that you can do an assessment, is the person's health -- overall health not

important?

A Important in what way?

Q Important in, for example, if he's in a wheelchair, is that not important as to blood flow and how that is measured? Does that have nothing to do with it?

A I would say, if they were paralyzed, that would have -- that could have an impact on blood flow. But being injured? Not to my knowledge.

Q No. So, for example, it would have to be as extreme as having completely no sensation for it to be remarkable or important to taking a PPG?

A I'm not sure. Like, I mean, we know if they're on certain medications. But really, I would -- in the PPG section of my report, I would note that if they didn't have an interpretable exam. So, if they totally flat-lined, I would speculate or I would list reasons for why you might see a flat line, and if they were on a certain medication that restricts blood flow, that is something that I would discuss. But if they had a valid PPG with clinical significant arousal, I typically don't talk about medication or talk about other things that might restrict blood flow.

Q Okay. And so does medication affect a PPG? Can it effect --

A It can.

Q Yes.

Did you happen to note whether or not Mr. Curtis was on medication when he took the PPG?

A I believe he is on -- he was on medication.

Q And do you remember what the medication was that he was on?

A I'd have to look at my report.

MS. SHAW: Your Honor, at this point, I would register an objection. This is more questioning for cross-examination rather than as a threshold admissibility issue. I mean, this is more stuff for the jury.

MS. JOHNSON: Well, Your Honor, I'm asking general questions and also specific as to Mr. Curtis. So, I believe both of them are important for this purpose.

THE COURT: Yeah, if you could kind of speed it up, and then I'll let you give a little summary and let you give a summary, and then I'll rule.

MS. SHAW: Thank you, Judge.

A Let's see, he was taking something for high blood pressure. So, we know that blood pressure medication can have an impact on blood flow. So, if had a flat line PPG, then I would discuss in the PPG section that that could be one of the interpretative hypotheses.

BY MS. JOHNSON:

Q Let me go to some of the more general things. For example, now you -- there was some -- you identified a

BlueCross BlueShield of Texas informational -- I'm not sure. What is this that you have identified?

A That one?

Q No. This is my copy, but I can show you my copy if you need it.

A I believe it's, like, the Explanation of Benefits. So, when you have insurance and you look to see what's covered.

Q And this is for Texas; correct?

A That's my understanding, of BlueCross BlueShield Texas.

Q Okay. So, as far as we know, this is not South Carolina; right?

A This is not South Carolina. I don't know if BlueCross -- we don't take insurance in forensic psychiatry at MUSC, so I don't know if, like, South Carolina Blue accepts it or not.

Q And even in the case, when Texas accepts it, it seems to be for evaluation of impotence; correct?

A Yes. Insurance companies, by and large, don't cover forensic evaluations. That's why we don't accept it. Most insurance companies don't cover that.

Q And so, does that mean that, by and large, insurance companies don't accept PPGs for the purposes of sexually violent offender evaluations? Is that correct as well?

A I don't know that they would ever cover a Sexually Violent Predator evaluation, period, regardless of what tests you used.

Q So, the answer is -- but still, no, it wouldn't cover that? It's for impotence?

A Not necessarily. They cover it for impotence, so that's one use of the PPG, to look at level of arousal, impotence, implants, things like that.

Q But the purposes of this, impotence; right?

A This is discussing impotence, yes.

Q Okay. And you did mention that you have got -- it says PPG at the top, and it's a long list of articles.

A Yes.

Q Did you come up with this yourself? Is this a list of articles that you put together?

A This is one of the lists that I made, yes.

Q Okay. And so, every single one of these deals with the PPG?

A Yes.

Q Is the PPG the primary subject of every single one of these?

A Not likely. I think there are some that talk about, like, an overview of sexual interests. So, it might talk about viewing time. It might talk about the Abel Assessment. It might talk about the Multiphasic Sexual Inventory 2. So it might talk about instruments or other ways to assess these things, but it discusses the PPG in all of these articles.

Q Okay. And so, when it discusses the PPG in all of these

articles, tell me this: Which ones out of this list are the PPG the major subject matter of the article?

A So, the first one, "Inhibiting Sexual Arousal to Children: Correlates and Its Influence on the Validity of Penile Plethysmography." That one.

"Absolute Versus Relative Ascertainment of Pedophilia in Men," that Blanchard study, that's on the PPG.

"Measuring Pedophilic Sexual Interest" by Fedoroff and colleagues. That is on the PPG.

The next one is, "Meta-Analysis" by Mary Chivers is looking at the concordance between self-reported sexual arousal and PPG data in men and then photovaginal plethysmography in women, in looking at the concordance between what they say they're aroused by and what they are physiologically aroused by. So it's about PPG and BPP.

"The International Review of Sexual Behavior Laboratories," that is looking at our lab, and that is the one that's looking at Canada and potentially the one in the Czech Republic, talking about our assessment laboratories and the PPG systems and stimuli that we use in each of those labs. So, that's not the primary focus, but there are sections on the PPG in that one as well.

"Differentiating Rapists and Non-Offenders Using the Rape Index." That's the rape index calculated with PPG data, so that is primarily about -- the whole paper is about PPG.

"Phallometric Diagnosis of Pedophilia" by Fruend and Blanchard. That is about the PPG.

"Psychophysiological Assessment of Erectile Response and its Suppression as a Function of Stimulus Media and Previous Experience with Plethysmography," that's PPG.

"Measurement of Risk of Sexual Violence through Phallometric Testing." So PPG, penile plethysmography, phallometric, that's all PPG. They're all the same kind of term for the same test.

The Kalmus and Beech "Forensic Assessment of Sexual Interest: A Review," if I'm not mistaken, there's a large section of the PPG on there. It might not be the only forensic assessment that they discuss, but if they talk about other ones, they talk a lot about the PPG.

Let's see. "A Comparison of Volume and Circumference Phallmoetry," that is PPG.

"Are Rapists Differentially Aroused by Coercive Sex in Phallometric Assessments?" That's totally about PPG.

Laws' "Penile Plethysmography: Strengths, Limitations, Innovations," that's about PPG.

Q And you're saying primarily about PPG when you're saying "that's about PPG"?

A Yeah. "Penile Plethysmography: Strengths, Limitations, Innovations," that's about PPG. I mean, all of them, if it's not the sole focus of the study was on PPG, it's a large

portion of it.

Q It's a large portion of it. Okay.

And do any of these also review the Real Child Voices?

A Yes. So, the ones looking at the comparison between the labs, those talk about the development of the Real Child Voices, the different stimuli that's used across labs, across countries.

Q And by "different stimuli," you mean different Real Child Voices or you mean Real Child Voices versus Monarch versus Marshall?

A Yeah, so which -- yes, what you said. Which stimuli they used, and then -- I can tell you which of the laboratory ones; I think it's the 2015 one -- goes into how the RCV was made and the study that they conducted when it was made.

Q Okay. And is this RCV -- I know you said the PPG has been peer reviewed; is that correct?

A Yes.

Q Has the RCV been peer reviewed?

A Yes.

Q Okay. And tell me about that.

A Yes. So, the laboratory -- the laboratory one that I mentioned where it talks about the development of the RCV, that is on this list, and that is -- it's either the 2015 or the 2019 laboratory one. RCV, that's the 2019. That's the Murphy, Curry, Dwyer, and Fedoroff.

Q And can you tell me the nature of that?

A Yes. So, it goes through how the RCV stimuli were developed. So Real Child Voices stimulus set were used during PPG examinations is different than other PPG stimuli in that it uses multiple actors' voices in the test scenarios as opposed to a single monotone voice.

The RCV set incorporates male and female voices of various ages to include adult, adolescent, and child voices and professionally produced sound effects. So, they noted in their 2019 paper, "In its creation, child actors were hired to read nonsexual scripts in a recording studio where the audio was later digitally spliced and put into a sexual scenario with voice recordings of adult actors and professionally produced sound effects." So, it goes through that. That paper was subject to peer review.

There's been some pilot studies and peer-reviewed abstracts that were presented at conferences. It showed promising results. We found that the RCV stimulus set produced similar results as the stimuli set that they use in Canada that features nude children. So, that's been shown in different samples in Canada.

Q Because Canada also uses a different visual medium, for example, than we all do in the United States. We don't use naked children -- or you don't use naked children in any of yours?

A Correct. So, Canada has a federal exception or a medical exception to their federal children pornography laws or akin to that, which we don't have in the U.S. So, the lab that I work with most often in Canada, they use their SVC standard set, which features nude children and the use of Real Child Voices.

Q So, when we're comparing them to what you have, there is actually a difference between the Canadian stimulus and the stimulus you use at MUSC?

A No. So, we both use the RCV, and we then also -- we, at MUSC, also use the Marshall, and the Canadian lab, they use the nude children.

Q The nude children.

A But we all use the RCV.

Q I gotcha. So, when you were talking about -- and I'm sorry; I might be a little confused. When you were talking about the comparison -- the article where they were compared and they were similar, what did you mean?

A So, the results -- the PPG results of men who had the nude children and the RCV, the RCV results were similar to the nude children, suggesting that you don't need to show somebody nude children to look at arousal to children.

Q Okay. So, they were comparing different -- I mean, I understand that they were both RCV, but really, they were comparing, I think, different things that were offered to --

for this assessment of the person who was taking the PPG?

A They were comparing the RCV set. The RCV to the set with the nude children.

Q Okay. And what about Marshall? Has that been peer reviewed?

A It has. So, the issue with -- that I testified now today to this already, the issue with all these PPG studies is they will describe, like, in their method section -- and it sounds like it could be the Marshall or it sounds like it could be the RCV, and I have reached out to a lot of authors. So, it's hard to tell which studies are using which stimuli. And I don't want to just go off of the methods where it says a monotone male voice describing this. Even though that sounds like they used the Marshall, I haven't listened to the Monarch or all the sets that they used, so I don't know.

Q Okay. And so, is your answer, then, you don't know of any peer review where it specifically -- where you know they specifically used Marshall?

A I think I have a list. I don't know off the top of my head, but I know that the reason that we -- that Greg Dwyer, who started the Sexual Behaviors Clinic and Lab and was the director before I took that position, the reason that he did the Marshall and the RCV is because the RCV had just been developed, and they were doing pilot studies. And so, he was doing the Marshall because it had more literature.

And I have been looking through his binders of all of those studies, and, like I said, there's a lot where the method sounds like it's the Marshall, but they don't say, "We used the Marshall set."

So, on the top of my head, I don't think I have it on this list, so I can't tell you the name of it, so that's what I'll say.

Q Okay. But, at best, you remember possibly there's one?

A Yes. It's my understanding that there are -- that it has been subjected to peer review, that there are multiple studies. That's why they implemented it in the first place in our lab, but I can't give you the list of them.

Q And you mentioned that there is a use of different voices. Is that the real child that uses different voices --

A Yes.

Q -- that hires actors?

A To make it, they hire actors, yes.

Q Okay. But, quite often, it's the same voice that's done with these stimulus sets?

A In other stimuli sets. So, like, in the Marshall set, it's actually his son, William Marshall, who is reading or acting out. You just hear the one male monotone voice. Where, with Real Child Voices, if they're talking about sexual conduct of the child, you'll hear a child's voice as well.

Q Okay. But you don't have any of that we could listen to

today; correct?

A The stimuli?

Q Yes.

A No.

Q No. So, for example, it can't -- you don't necessarily reproduce it for a jury to hear; right?

A I wouldn't -- I wouldn't know how to do that. I guess, if we brought in the whole computer system. It's part of the program. Like, I don't think that I could -- I think I'd need the PPG to do it, but I don't know enough about the, like, technology in general to fully answer that question. To my knowledge, I couldn't -- I wouldn't know how to bring it in.

Q And isn't there also an issue because it's some proprietary software or that sort of thing?

A I mean, we have a license through Limestone.

Q Okay. So, when we talk about that it involves children's voices, we're taking your word for it. We don't know for certain that -- we can't hear it ourselves in the courtroom?

A Correct.

Q Okay. And with these -- you mentioned that you like to be as conservative as possible when it comes to looking at the change in -- what would you call it? The physiological response? The blood flow?

A We're looking a cut score --

Q A cut score?

A -- for clinically significant arousal.

Q Okay. But there are other labs who use different cut scores, is what you were saying?

A Yes.

Q Right. And even in, for example, Canada, they would use maybe a different cut score?

A Yes.

Q So, you mentioned that the DSM-5 has discussed this in a better light. At some point, this was really hotly contested; correct?

A That is my understanding. I can't remember what DSM-IV-TR said, but I know DSM-5 that was published in 2013 was favorable towards using the PPG.

Q And -- but it was favorable towards using the PPG for pedophilic disorder specifically; did it not mention?

A It's under the pedophilic disorder category, yes. I mean, it's def- -- the PPG is widely used and widely researched for pedophilic disorder.

Q Right. But, in this case, you haven't diagnosed Mr. Curtis with pedophilic disorder; correct?

A I didn't diagnose him with any pedophilic disorder. Well, exhibitionistic disorder. Correct myself. But not, like, paraphilic coercive disorder or other things that I -- that you're looking at on the PPG.

Q So when we're talking about the validity and reliability

of this PPG, we have to look at the actual instrument itself, the actual PPG, correct, as well as the stimulus; right?

A Mm-hmm.

Q And then we also look at the way the responses are interpreted? Well, I'm saying "responses," but the cut scores are interpreted.

A The results.

Q The results are interpreted. Okay.

So, it's really a three part we're looking at here.

A The -- the stimuli --

Q Yes.

A -- the interpretation --

Q Yes.

A -- and what was the third?

Q The actual machine, the PPG. For example, the band he puts around his penis, for example, or something like that.

A I guess. I mean, all the gauges are either made of mercury or indium-gallium.

Q Okay. Then you tell me. What are the different components that make this PPG all work? You need the stimulus; right?

A Yes. You have to present them with something to test arousal.

Q So, that's the stimulus.

A Yes.

Q Yes. Okay.

And the thing that tests arousal, what is that?

A So, the strain gauge.

Q The strain gauge.

A The strain gauge that -- or the P gauge that they're putting around their penis, that is attached to the hardware, is what is -- that's what you calibrate. That is what is measuring the changes in arousal or in circumference.

Q Okay. And then that arousal is then produced in a manner that you can see; correct? Like is it -- does the software, then, create a printed version? Like, is it a number? What is it?

A It's both. It's -- yes. It's numbers, and when I'm looking at each trial second by second, I'm looking at it -- it's a chart, a graph. So, I'm looking at the line that represents the P gauge on a plotted graph.

Q And do you just do these PPGs for South Carolina or do you do them for other states?

A Our lab is in South Carolina. I'm licensed in Georgia but I don't -- I haven't had the opportunity to see how that would work in bringing someone from Georgia to South Carolina. They make mobile labs. I don't have a mobile lab.

Q Okay. So --

MS. JOHNSON: Beg the Court's indulgence, Your Honor.

BY MS. JOHNSON:

Q So, now, I mentioned that the -- you do acknowledge that there's been quite a lot of controversy about this PPG being used in court for pre-commitment of sexually violent offender evaluations; right?

A I don't know about the controversy.

Q You don't?

A Like, I have read, like, 9th Circuit opinion. Is that *Weber*? Like, I have read some case studies, but not -- I don't think any of them were about SVP.

Q So, as far as you know, then, the PPG is accepted everywhere in South Carolina that you attempted to use it?

A I'd say lately more often than not, yes.

Q But not every time?

A No, not every time.

Q You acknowledge that not every time this PPG is used; correct?

A Not used, but allowed.

Q Used in the -- allowed in the court, yes.

A Yes.

Q And, for your purposes, can you do a sexual -- a pre-commitment evaluation without the PPG?

A It's part of my standard protocol. It is a data point that I want to consider. If an attorney calls me and says, "Will you evaluate my client," I tell them that PPG is a

standard part of it.

So, in a perfect world, I would use it every single time. There has been -- I couldn't tell you a number -- a couple, a handful where somebody is being evaluated under SVP and doesn't consent to take the PPG and then the Court has said they don't have to take it. That -- less than five that I have done. And so, I have had to do them without it.

Q And in that time, are you able to render an evaluation or render an opinion in those evaluations that you do or that you have done?

A Yeah. I mean, ultimately, I render an opinion. I might caveat it. I might say we don't have data for this. There's some data that suggests this arousal, but ultimately, we don't know. But, yes, I have rendered opinions in cases where I was not permitted or the person did not consent to take a PPG.

Q Okay. And you said the PPG is really -- is it really only ethically used when it's used in conjunction with other tests?

A Not just other tests. It should never be, like, the sole basis for any clinical decision.

Q And in this case with Mr. Curtis, it was not the sole basis of your decision?

A No. It was one data point. So, specifically for Mr. Curtis, there was some arousal to coercive violent sexual scenarios. There was some data from one of his offenses, but

I didn't think there was enough data to support that diagnosis despite the PPG results. I considered it as a data point, but ultimately decided that it didn't rise to the level that I thought he met diagnostic criteria.

Q And some of the other data points that you have relied on charges that have been brought against Mr. Curtis; correct?

MS. SHAW: Your Honor, I'm going to object to this. This is going real far afield. We're starting to talk about other conduct. I mean, this is a *Council* hearing regarding the admissibility of one particular test.

THE COURT: I tend to think so. I'm pretty sure I have heard enough to make a decision.

MS. JOHNSON: Your Honor, I was simply asking -- and I understand, Your Honor, so if you want me to wrap up, I understand. But I was actually asking because she said that, ethically, it needs to be in conjunction.

BY MS. JOHNSON:

Q So, I would like to know if some of the other data points relied on criminal offenses that were convicted or not convicted. Can you tell me that?

A I can. So, when I do an evaluation, I do what's called a multi-method assessment. So, I'm looking at collateral sources. I'm looking at measuring a similar construct in different ways. So, I like to give a sexual behavior questionnaire and ask those questions in my clinical

interview. So, I incorporate all the data sources. So, any data provided to me, I consider it. They are all a data point.

Q And even data points where you have not been able to verify the veracity or the accuracy of the data that you're using, you still would use those?

A Can you give me an example?

Q For example, when you have a police report where, for example, my client may not have been arrested or even charged, you would still use that?

A Yeah, I think I know what you're talking about. I listed that because I received that information, but that doesn't -- it's not used to score any measure for something that's uncharged.

Q I see. Okay.

MS. JOHNSON: And, Your Honor, I'm just about wrapping it up. I think I just had one more question. Maybe not.

Okay. Your Honor, I have no further questions of this witness at this time.

THE COURT: Thank you. You may step down.

Would you like to take a couple of minutes and briefly summarize your positions?

MS. SHAW: I will, Your Honor, but I had just two redirect questions, if that's all right.

MS. JOHNSON: And, Your Honor, I would also like to offer

a witness.

MS. SHAW: Your Honor, this is the first time hearing a witness in the *Council* hearing, other than Dr. Gehle. Is that who you're talking about?

MS. JOHNSON: Yes.

REDIRECT EXAMINATION

BY MS. SHAW:

Q Dr. Gottfried, you were asked about Mr. Curtis having hurt himself and he was unable to complete the PPG on the first scheduled date.

A Yes.

Q On the second date, ten days later, did Mr. Curtis, in any way, shape, or form, indicate to you that he was unable to or not feeling well to complete the exam?

A He did not indicate to me, because I didn't administer the PPG; however, my tech -- like, if somebody doesn't want to do it or even if they're complaining a lot but saying they'll do it, he still comes to talk to me. So, certainly, I have notes on this, but it would not have been done if he said he couldn't do it.

Q Okay. So, you never force anyone to undergo this examination if they say they're sick or not feeling up to it or just will not do it?

A No. There are people who say they don't want to do it. We don't force anyone to do anything. They have to consent to

do it.

Q And you were asked about your $5,600 fee for an independent evaluation.

A Yes.

Q Do you personally get that money?

A No.

Q Does any of it go to you at all?

A No. It doesn't even come really to my clinic lab. It goes to MUSC. I mean, certainly they use that to help pay my salary and the computers, but I don't get a check for that.

Q Okay. So, you have no direct interest in the outcome of any of these evaluations; correct?

A I don't.

Q And the last thing I was going to ask you is, you were asked about if an individual has medical conditions or is on medications, could that affect the outcome of the PPG; correct?

A Yes.

Q Do you recall that?

A Yes.

Q Okay. And you're familiar with Mr. Curtis being on hypertensive medications?

A Yes.

Q And he still produced clinically significant results?

A Yes.

Q Thank you.

MS. SHAW: Nothing further.

THE COURT: Would you like to follow up?

MS. JOHNSON: No, sir.

THE COURT: You may step down.

Would y'all like to take a moment and summarize your position to me?

MS. SHAW: Sure, Your Honor.

THE COURT: And then I think I can rule pretty promptly.

MS. JOHNSON: Your Honor, may I call my witness, though, regarding this, Your Honor?

THE COURT: Why don't you let me rule and then, if you think you need to call your witness, let me know.

All right. Go ahead. Let me hear from the State.

CLOSING ARGUMENT ON BEHALF OF THE STATE

MS. SHAW: Thank you, Your Honor.

Your Honor, we are here on the Respondent's motion to bar the PPG evidence from coming in at trial pursuant to *State v. Council*, 515 S.E.2d 208, S.C. (1999). The criteria for admissibility of a scientific test are announced in both *Council*, *Johnson*, and also underscored *Watson v. Ford Motor Company*, 699 S.E.2d 169 (2010).

One thing that the trial courts have made very clear is that there must be a threshold indicia of reliability and general acceptance in the medical community so that an expert,

pursuant to Rule 703, can base their opinions and conclusions on that data.

Per the *Watson* standard, the subject matter of this type of test must, in fact, be beyond the kin of the ordinary juror. Certainly, penile plethysmography and Sexually Violent Predator evaluations are outside the scope of the general population.

The proffered expert has knowledge and skill to be qualified. Your Honor heard her qualifications, her experience, her training, and her interpretation and methods of using the PPG, and the substance of the testimony must be reliable.

Dr. Gottfried has done almost 50 of these in her career. She does them routinely as part of her evaluations, it's a standard procedure, and it's only one data point. You heard her testify that, ethically, she would make never a diagnosis or make any recommendations for treatment or commitment based on that alone.

And so, in determining that, we also have to look at *Council*, and we have to determine, number one, has the method been peer reviewed? Yes, it has. Clearly, you have three exhibits there both regarding the SPCL lab, the PPG in and of itself, and the Limestone Technology, which is what the SPCL uses. So, clearly, these tests have been extensively peer reviewed.

There are also three books, including the DSM-5, which is -- I'm sorry, Your Honor; my phone was ringing -- the DSM-5, a 2009 study or evaluation book for best practices, as well as multiple additional peer-reviewed articles which all support the use of the PPG in multiple contexts, not only medical but also psychological and psychosexual, as well as to assess treatment progress for these types of offenders.

And as you also heard Dr. Gottfried say, she used an extremely conservative cut score because she'd much rather have a false negative than identify something that wasn't there, especially in these kind of a high-stakes evaluation.

Your Honor also has as a Court's exhibit the actual procedures that the SPCL uses, which is a layout, the quality controls, and the procedures used to ensure reliability and replicability. You heard Dr. Gottfried testify that two evaluators trained in the Limestone, using the same cut score across two different labs, would interpret the data the same way and would come to the same conclusion.

So it is both replicable and there are built-in quality control measures, because without having calibrated the actual machine itself to test the relative tumescence or detumescence of the examinee, you have to calibrate it before you can even start the test. So, you can't present a stim set until that strain gauge is properly calculated to the individual.

And, lastly, the consistency of the method and recognized

scientific laws and procedures, the method used by Dr. Gottfried's lab has been well studied. The RCV and the Marshall sets have been widely accepted. The RCV comes standard with the Limestone package, but they use an additional Marshall set, which has been in existence for over 20 years, to further support the findings and to verify the data.

So, based on all of that, Your Honor, I believe we have submitted sufficient evidence to you in the form of peer-reviewed articles, learned treatises, testimony from the actual person who does the PPG and administers and supervises it to ensure a baseline of reliability, and anything further than that at this point would be a matter for the jury to give whatever weight and credibility it decides to give to the PPG test itself. Thank you.

THE COURT: All right. Thank you.

Ms. Johnson?

MS. JOHNSON: Your Honor, I will be very brief.

THE COURT: Sure.

CLOSING ARGUMENT ON BEHALF OF THE RESPONDENT

MS. JOHNSON: The basics of the reason why we are asking for the PPG to be excluded, Your Honor, is because, number one, my client -- we believe that it violates his Fourteenth Amendment due process rights. We don't have access to the raw data here in the courtroom. We only have access to evaluation

made from the raw data.

The witness today did not conduct the test herself, and so, even the ability to rely on whether the test was done correctly is based on what she did. We're not able to confront the witness ourselves about that, Your Honor.

There has been numerous questions about the scientific reliability and validity of this PPG, especially considering that it varies from site to site. As Dr. Gottfried said herself, even the stimuli used, for example the Real Child Voices, they use actual active voices, which are different than other tests which use monochromatic voice -- monochromatic -- monotone voice. Sorry, Your Honor. And so, we believe that is really important information.

As well, Your Honor, it's -- I don't have any information regarding whether this has been used in comparison to whether this particular test was conducted on non-offenders, people who had never offended against anybody, and we believe that there's just not enough peer review studies to meet the threshold.

We do offer -- we can offer Dr. Gehle if Your Honor would like more information, but we are asking that it be excluded, and at the risk of going on and on about it, I will sort of leave that. We also believe that it's unfairly prejudicial, Your Honor. And with that, Your Honor, I'll rest.

JUDGE'S RULING

THE COURT: All right. These are my thoughts. I have no qualms whatsoever with Dr. Gottfried's expertise. She's been in court numerous times. She knows what she's doing. She's clearly an expert.

The State is focusing mainly on the reliability of the test; however, in my opinion, the PPG test used in this context is potentially a violation of the Fifth Amendment, as it is forcing someone to testify against themselves through involuntary bodily actions.

But more importantly than that, my focus is on the 403 analysis, and I'm going to find that, even though it may be relevant, I find that its probative value is substantially outweighed by the danger of unfair prejudice.

When this jury comes in here, ordinary, normal citizens from Horry County, and they sit down and they hear everything that the Respondent did, what's in his background and his crimes and all that kind of stuff, that's going to be shocking enough in itself.

But then you add to it the PPG test and all the nuances of that test and what it says, it's almost like a ropes down (ph), that the jury is going to commit him to a state institution. There's no way they can go back there and just sit in that room and start weighing everything and analyzing it like it's a normal case. They're just going to be overwhelmed with everything.

So, I'm going to keep out the PPG test, and we can proceed forward on everything else. All right?

Let's take a 10-minute bathroom break and let's come back and start with opening statements.

MS. SHAW: Thank you, Your Honor.

MR. RUNYAN: Your Honor, it was good to see you. I was just here for the *Council* hearing, and I'll be stepping out.

THE COURT: Good to see you. Hope you have a good trip.

MS. SHAW: And, Judge, for logistics, do we want to kind of just do openings today? Because mine won't be very long. It will be maybe 10, 15 minutes. I don't know how long Ms. Johnson plans to do it. And then, by that point, it will be 4:00.

THE COURT: And then who do you intend to put up today?

MS. SHAW: Well, I was going to start with Dr. Gottfried, but I don't think we'll be able to finish in one hour.

MS. JOHNSON: I am going to do a very short opening, Your Honor. I mean, I imagine probably five minutes. So, whatever Your Honor is comfortable with. I plan to be here tomorrow anyway.

THE COURT: Okay. Lets's do that. And I may -- I'm trying to find somebody to fill in for me Thursday just case this spills over to Thursday.

MR. SHAW: Okay. Thank you, Your Honor.

THE COURT: So, we'll see. But we'll do that.