

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
The Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case No. 2022-000371

RECEIVED

Oct 10 2024

S.C. SUPREME COURT

IN THE MATTER OF THE CARE AND TREATMENT
OF SHAWN TORLIF DAILY,

Respondent.

APPENDIX

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3747

LARA M. CAUDY
Appellate Defender

SC Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

Shawn Torlif Daily

AKA:

Race: W Sex: M Age: 38

DOB: 1972 SS#: _____

Address: N. Hwy 14

City, State, Zip: GREER, SC 29615

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996) 0-15 years 3/for duress/duress

in violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468

☐ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTORNEY: ALICIA GIBSON
GIBSON, ALICIA C77705
SC Bar# Defendant328
Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of 10 days/months/year and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

§ 47-12 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00

§ 14-1-213 (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(I) (Vehicle Assessment) \$40/ea \$ _____

§ 90.7(SCCJA Surcharge) \$5 \$5.00

3% to County (if paid in installments) \$3.90

TOTAL \$133.90

Clerk of Court/ Deputy Clerk

Court Reporter: P. Green

SCCA/217 (11/2009)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS4202645

A/W#: M110281

Date of Offense: 9/20/2002 - 9/20/2006

S.C. Code § : 16-15-0140

CDR Code #: 2468

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTORNEY: ALICIA GIBSON
GIBSON, ALICIA C77705
SC Bar# Defendant328
Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of 10 days/months/year and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
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Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

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§ 90.7(SCCJA Surcharge) \$5 \$5.00

3% to County (if paid in installments) \$3.90

TOTAL \$133.90

Clerk of Court/ Deputy Clerk

Court Reporter: P. Green

SCCA/217 (11/2009)

ACERTIFIED COPY
AL HOPE BLACKLEE
CLERK OF COURT
SPARTANBURG COUNTYObtain GED ☐

Attend Voc. Rehab. or Job C. BY: ALICIA GIBSON

May serve W/E beginning DATED 3-18-10

Substance Abuse Counseling ☒Random Drug/Alcohol testing ☒

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: actual abuse conducted; GPS moni

I have accepted the plea to lewd act

and defer sentencing to the judge who

hears to CSC plea. P. Green 2010

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge P. Green

Judge Code: 2096

Sentence Date: March 18, 2010

AGENCY I.D.
SC0420000

INCIDENT REPORT

CASE NUMBER
2009010383

NCIC
INQ. ENTD.

EVENT	INCIDENT TYPE				COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM	
	1. Lewd Act with a Minor				☒ YES ☐ NO	☐ YES ☒ NO	Residence		☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Religious Org. ☐ Soc. Public ☐ Other ☐ Unknown ☐ Follow Off.	
	2.				☐ YES ☐ NO	☐ YES ☐ NO				
VICTIM NO. 1	3.				☐ YES ☐ NO	☐ YES ☐ NO				
	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)						ZIP CODE	WEAPON TYPE		
	Glenwood Hills Dr. Spartanburg, SC						29307	none		
	INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK		LOCATION NO.		
	09/20/02			09/20/06		DISP. DATE DISP. TIME TIME ARRIVED DEPART TIME		14		
	01/08/09									
	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT		*RESIDENT	RACE	SEX	
	B. Claire				#1 AQ #2 #3		☒ J ☐ O ☐ S ☐ U	W	F	
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.		
	Flatwood Ln.				Spartanburg	SC	29307	14		
VICTIM NO. 1	VICTIM'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT		*RESIDENT	RACE	SEX	
	Minor 3				#1 AQ #2 #3		☒ J ☐ O ☐ S ☐ U	W	F	
	HEIGHT WEIGHT HAIR EYES				FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		DOB: /99			
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.		
	Flatwood Ln.				Spartanburg	SC	29307	14		
	VISIBLE INJURY (ACT. 1) ☐ YES ☒ NO EXPLAIN.				COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☒ NO					
	VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☒ NO ☐ UNK. DRUGS: ☐ YES ☒ NO ☐ UNK. TYPE:									
	☐ TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPECIAL AGENT. ☐ OTHER ☐ ALONE ☐ ASSISTED				* J - This Jurisdiction S - State O - Out of State U - Unknown					
	SUBJECT NO. 1	☒ SUSPECT	NAME (LAST, FIRST, MIDDLE)				RACE	SEX	AGE	ETH.
		☐ RUNAWAY	Daily, Shawn Torlif				W	M	36	N
☐ WANTED		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
☐ WARRANT		ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	
☐ ARREST		Glenwood Hills Dr.				Spartanburg	SC	29307	14	
☐ JAIL		SUSPECT (NO. 1) USING: ALCOHOL ☐ YES ☒ NO ☐ UNK. ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO				DATE/TIME OF OFFENSE DATE/TIME OF ARREST				
☐ SUMMONS		DRUGS: ☐ YES ☒ NO ☐ UNK. TYPE:				TOTAL ARRESTED				
In April 2006, Spartanburg City Police Department completed a police report and an investigation in reference to inappropriate touching on Minor 3 by Shawn Daily at the YMCA. However, Minor 3's mother, Claire B., would not allow anyone to interview her daughter at that time. She was very supportive of Shawn Daily. Shawn Daily was arrested on November 25, 2008 for Lewd Act w/ a Minor (Spartanburg County case 2008040363). Claire B saw the article in the newspaper and contacted me. She stated that she talked to her daughter about Shawn after the pool incident and she denied Shawn touching her inappropriately. However several months later, Minor 3 disclosed to her mother that Shawn would sit naked on the couch with only a blanket on his lap. Shawn would have Minor 3 come sit on his lap and it made her feel uncomfortable. Claire stated that she did not think that there would be enough to pursue criminal charges but they confronted Shawn with the allegation, Shawn calmly denied the allegation but never contacted the family again. He had been in their lives for over 7 years. I asked Claire if she would consent to have Minor 3 seen at the Children's Advocacy Center. She agreed and I made the referral. Further investigation required.										
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY						
ADMINISTRATIVE		TYPE (GROUP)				TOTAL VALUE				
	STOLEN									
	DAMAGED									
	BURNED									
	RECOVERED									
ADMINISTRATIVE	SUBJECT IDENTIFIED ☒ YES ☐ NO				SUBJECT LOCATED ☒ YES ☐ NO					
	☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED				☐ ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18					
	☐ ARRESTED 18 AND OVER ☐ EX-CLEAR 18 AND OVER									
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES PROSECUTION 5. ☐ JUVENILE - NO CUSTODY									
	REPORTING OFFICER(S)		DATE	BADGE #	APPROVING OFFICER		DATE	BADGE #		
Nicki Cantrell		01/08/09	686							
FOLLOW-UP INVESTIGATION ☐ YES ☒ NO				OFFICER						

01/20/09
10:56

Spartanburg County Sheriff's Office
Deputy Supplemental Report

Page: 643
2

Investigation Report
Spartanburg County Sheriff's Department

Case Number: 2009010383
Incident Type: Lewd Act w/ Minor
Victim: Minor 3
Location: Glenwood Hills Dr. Spartanburg, SC
Incident Date: 09/20/02 - 09/20/06
Patrol Officer:
Investigator: Cantrell, Nicki

FILED
2019 SEP 10 AM 10:30
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

12-03-08 / 0856 hours

Claire B left me a voicemail stating that there was an incident two years ago with her daughter, Minor 3, and Shawn Daily. She stated that she could be reached at

12-03-08 / 0945 hours

I called Claire B back. Her daughter was listed as a victim in the incident Spartanburg Public Safety investigation at the YMCA with Shawn Daily. I identified myself to Claire. She explained that her daughter had told her two years ago that Shawn would take his clothes off and sit on the couch. He would cover his lap with a thin blanket and ask Minor 3 to sit on his lap and to hug him. Claire stated that she had been friends with Shawn for 6 years. She knew him before she had Minor 3. She stated that he would watch Minor 3 for her. However, it was only during the day. Minor 3 never spent the night with him. Claire stated that after her daughter disclosed this to she and her husband, her husband confronted Shawn on the telephone with the allegation. She stated that Shawn remained calm and vaguely denied the allegation. She stated that they never heard from him again. I told Claire that I would like to meet with her and talk to her in person. We scheduled a meeting for the following morning at 10:00am. Claire works at the Deaf and Blind School. She stated that her office is located in the Spring Annex

12-04-08 / 1000 hours

I went to the Deaf and Blind School to meet with Claire B. We discussed what her daughter had disclosed to her. She stated that she talked to her daughter about the incident at the YMCA but her daughter denied anything inappropriate taking place. She stated that she has talked to her daughter to find out if anything else has happened and Minor 3 only discloses about Shawn sitting naked with a blanket over his lap and wanting her to sit on his lap. Claire stated that Minor 3 never spent the night at Shawn's house. Shawn was always wanting her to but Claire would not allow it. Claire stated that Shawn should never have given Minor 3 a bath either. Shawn asked one time and Claire told him no. I told Claire about the Children's Advocacy Center and asked her if she would be willing to have Minor 3 seen there. She agreed. I called Michelle from the CAC and scheduled Minor 3 a forensic for Monday, December 8, 2008 at 3:00pm.

12-30-08

We staffed this case at the Children's Advocacy Center. Michelle stated that Minor 3 disclosed in detail about Shawn taking off his pants and sitting naked with a cover over his lap. He would have Minor 3 come sit on his lap. She stated that she could feel his penis. Minor 3 stated that if she refused, Shawn would put his pants back on. That indicated the sexual intent of the action. Minor 3 also disclosed about Shawn rubbing her breast one time while he was bathing her. She stated that she bathed herself at home but one time at Shawn's, he bathed her with a sponge and he dropped the sponge and his hand

01/20/09
10:56Spartanburg County Sheriff's Office
Deputy Supplemental ReportPage: 643
3

rubbed her breast. She stated that he asked her to bend over and get the sponge. She said that it made her feel very uncomfortable.

01-08-09 / 1030 hours

I spoke to Jennifer Jordan with the Solicitor's Office and ran the case by her. She stated that she felt there was enough to go forward with. She advised that I seek a warrant for Shawn's arrest.

01-08-09 / 1130 hours

I called Claire B and discussed pursuing charges against Shawn in reference to the incidents with Minor 3. She was supportive and agreed. She was most concerned about doing what was right for her daughter. I explained the process to her and she felt that it would be best to go forward.

01-12-09

I presented this case to Judge Turner. He issued warrant M-110281 on Shawn Daily for Lewd Act with a Minor.

01-12-09 / 1230 hours

I went to Shawn Daily's residence. There was no one home.

01-13-09 / 1500 hours

I went to Shawn Daily's residence in attempt to serve the arrest warrant. There was no one home.

01-13-09 / 1900 hours

Detective Letterman and I went to Shawn Daily's residence. There was no one home. The lights were off and the power meter was not running. We spoke to the neighbor and she stated that around Thanksgiving was the last she saw anyone there. She stated that there was a U-Haul there and Shawn was moving his belongings out.

We took the arrest warrant to a Greenville County Magistrate and had her countersign the warrant.

We went to N. Hwy. 14 Greer, SC to his parents' residence. His vehicle was parked behind the house. A man that looked like Shawn, but due to the darkness at night we were unable to positively identify him, came walking toward us. We pulled out of the driveway. The man got into a red car and followed us for awhile. We pulled into a gas station and called Greenville County. We called for a Greenville County Officer to respond with us to the residence. When the Greenville County officer arrived, we went to the residence. Shawn's mother answered the door. We asked for Shawn. He came downstairs. The Greenville County Officer served the arrest warrant on Shawn and arrested him. He turned Shawn over to Detective Letterman and I. We transported him to the Detention Center without incident. I asked Shawn who's red car was in the driveway. He stated that he did not want to answer that without his attorney. I asked him if he wanted to answer any questions. He said no. I told Shawn that he did not need to have any contact with the B family from this point on. I did not speak to him the rest of the way back to Spartanburg. This case is closed based on the arrest of the suspect.

FILED
19 SEP 10 AM 10:30
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. GOK

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

PETITIONER'S EXHIBIT

E

FILED

2019 SEP 10 AM 10:30

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

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

Minor 4

FILED

2019 SEP 10 AM 10:30

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

2019 SEP 10 AM 10:30
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

FILED

Form Approved by
S.C. Attorney General
April 27, 2005
SCA 518

ORIGINAL

AFFIDAVIT

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant James Austin who

being duly sworn deposes and says that defendant Shawn T Daily

did within this county and state on or about 02/14/1992 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

The affiant has a statement from a twenty year old female victim implicating the defendant in the above listed offense. The victim states that during the year of 1992 or 1993 when she was four or five years of age, the defendant came to their house for a visit. While there, the defendant took the victim into the bathroom and pulled down his pants and had the victim touch his penis. The defendant during this time did fondle the victim's vaginal area. This incident did occur in the County of Greenville. See case # 09-26933

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 McGee Street
Greenville, SC 29601-
Affiant's Telephone (864)467-5135

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing that above affidavit that there are reasonable grounds to believe that

on or about 2/14/1992 defendant Shawn T Daily

did violate the criminal laws of the State of South Carolina (or ordinance of Greenville) as set forth below:

☒ County/ ☐ Municipality of Greenville

DESCRIPTION OF OFFENSE: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 03/12/2009

Judge's Address 4 McGee Street, Room 116-B
Greenville, SC 29601-

Judge's Telephone (864)467-5302

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

Signature of Issuing Judge
Jamie E. Hudson

Judge Code: 5031

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Enforced on
NOTICE

ARREST WARRANT

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

THE STATE
against

09-26933

Shawn T Daily

Address: GLENWOOD HILLS

Spartanburg, SC 29307-

Phone: SSN: 012

Sex: M Race: W Height: 6 4 Weight: 150

DL State: SC DL #: 1972

DOB: 1972 Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriff's Office

Prosecuting Officer: James Austin - 0011

Offense: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

Offense Code: 2468

Code/Ordinance Sec: 16-15-0140

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Shawn T Daily on 4/2/09

Signature of Constable or Enforcement Officer

RETURN WARRANT TO:

City Magistrate 2
4 McGee Street Room 116-B
Greenville, SC 29601

OF

GREENVILLE COUNTY SHERIFF'S OFFICE INCIDENT REPORT

CASE NUMBER

ADULT/
JUVENILEAGENCY I.D.
SC0230800OFFENSE
11DSLED
SUB-CODE

RTA

09000026933

EVENT	INCIDENT TYPE		OFFENSE COMPLETED		FORCED ENTRY		PREMISE TYPE		UNITS ENTERED		TYPE VICTIM	
	1. SEXUAL ASSAULT INVESTIGATION		YES ☒ NO ☐		YES ☐ NO ☒		Residence/Home				☐ INDIVIDUAL ☐ BUSINESS ☐ FINANCIAL INST. ☐ GOVERNMENT ☐ RELIG. ORG. ☐ SOC/PUBLIC ☐ OTHER ☐ UNKNOWN ☐ POLICE OFF.	
	2. INCIDENT LOCATION (SUBDIVISION, HILL VILLAGE, APARTMENT AND NUMBER, STREET NAME AND NUMBER)		YES ☐ NO ☐		YES ☐ NO ☐							
	STATE PARK RD.											
VICTIM	INCIDENT DATE		TIME		TO		DATE		TIME		WEAPON TYPE	
	1992		0000								Personal Weapons	
	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RESIDENT		RACE		SEX		AGE		TIME ARRIVED	
	PARIS, DEIDRA		J		W		F		46		2/14/09 1908	
SUBJECT	ADDRESS		CITY		STATE		ZIP CODE		DAYTIME PHONE		EVENING PHONE	
	AVON DR.		TAYLORS		SC		29687				SAME	
	VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT		RACE		SEX		AGE	
	Minor 4		A/Q V/A/Quasi		J		W		F		20	
NARRATIVE	ADDRESS		CITY		STATE		ZIP CODE		DAYTIME PHONE		EVENING PHONE	
	BATESVILLE RD.		GREER		SC		29650				SAME	
	VICTIM (NO. 1) USING ALCOHOL		YES ☐ NO ☐ UNK ☐		DRUGS		YES ☐ NO ☐ UNK ☐		TYPE			
	TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/PLASMT. ☐ OTHER ☐		ALONE ☐ ASSISTED ☐		J. THIS JURISDICTION ☐ STATE ☐ OUT OF STATE ☐ UNKNOWN ☐							
VEHICLE	NAME (LAST, FIRST, MIDDLE)		RACE		SEX		AGE		DATE OF BIRTH		HEIGHT	
	DAILY, SHAWN TORLIF		W		M		36		72		603	
	ADDRESS		CITY		STATE		ZIP CODE		PATROL DISTRICT		HAIR	
	GLENNWOOD HILLS DR.		SPARTANBURG		SC		29307		OJ19		BLN/Blu	
PROPERTY	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL, PECULIARITIES, ETC.		DATE/TIME OF OFFENSE		DATE OF ARREST		SUBJECT (NO. 1) USING ALCOHOL		YES ☐ NO ☐ UNK ☐		DRUGS	
			1992		N/A		YES ☐ NO ☐ UNK ☐		YES ☐ NO ☐ UNK ☐		TYPE	
	ARRESTED NEAR OFFENSE SCENE		Total Arrested: 0		ARRESTED ON CURRENT OFFENSE		CLEARED BY ARREST ON PRIOR OFFENSE					
	ARRESTED ARMED		YES ☐ NO ☐ WEAPON TYPE:		ARRESTED ON CURRENT OFFENSE		CLEARED BY ARREST ON PRIOR OFFENSE					
ADMIN	JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY ☐		ON VIEW ARREST ☐ SUMMONED ☐ CUSTODY ☐		CHARGES		WARRANT #		TICKET #			
	Arrest Location: N/A		Gang Activity: NG - Not Gang Related									
	I RESPONDED TO THE VICTIM'S MOTHER'S RESIDENCE IN REFERENCE TO A SEXUAL ASSAULT THAT OCCURRED APPROX. 14-15 YEARS AGO AT THE INCIDENT LOCATION.											
VEHICLE	JURISDICTION OF THEFT: N/A		JURISDICTION OF RECOVERY: N/A		V.T.N.		VALUE					
	TAG NUMBER		STATE		YEAR		MAKE		MODEL		STYLE	
	N/A											
	COLOR											
PROPERTY	Status		Property Type		Quantity		Property Make		Color		Description	
	NONE											
ADMIN	SUBJECT IDENTIFIED		SUBJECT LOCATED		ACTIVE ☐ ADMIN. CLOSED ☐		ARRESTED UNDER 18 ☐		EX-CLEARED UNDER 18 ☐			
	YES ☐ NO ☐		YES ☐ NO ☐		UNFOUNDED ☐		ARRESTED 18 AND OVER ☐		EX-CLEARED 18 AND OVER ☐			
	REASON FOR EXCEPTIONAL CLEARANCE: 1. OFFENDER DEATH 2. NO PROSECUTION 3. VICTIM DECLINES COOPERATION 4. EXTRADITION DENIED 5. JUVENILE NO ARREST											
	REPORTING OFFICER (S)		DATE		Unit # / Star #		APPROVING OFFICER		DATE		Unit # / Star #	
GRIFFIN, B.		2/14/09		B22		2/15/09		2/15/09				

OF AGENCY I.D.
SCO230000

GREENVILLE COUNTY SHERIFF'S OFFICE
SUPPLEMENTAL REPORT

CASE NUMBER

09000026933

☐ ORIGINAL REPORT	☐ STATUS CHANGE	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	INCIDENT TYPE	SEXUAL ASSAULT INVESTIGATION	
☒ SUPPLEMENTAL REPORT	☐ OTHER REPORT	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	PATROL DISTRICT	02B	PAGE 1 OF 1 PAGES

I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)			VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.
	☐ VICTIM #	SEE ORIGINAL			#1	#2	#3					
	☐ SUBJECT #	ADDRESS			CITY	STATE	ZIP CODE	PATROL DISTRICT	DAY PHONE	N	EVENING PHONE	N
	☐ RUNAWAY	HEIGHT			WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.				
	☐ WANTED	VICTIM NO.			VISIBLE INJURY:		COMPLAINT OF NON-VISIBLE INJURIES		VICTIM USING ALCOHOL:		☐ NO ☐ YES ☐ UNK.	
☐ ARREST	EXPLAIN:			☐ YES ☐ NO		☐ NO ☐ YES		DRUGS: ☐ NO ☐ YES TYPE		☐ UNK.		
☐ MISSING	SUBJECT NO.			USING ALCOHOL		☐ NO ☐ YES ☐ UNK		TWO-MAN VEHICLE ☐ DETECTIVE ☐ ALONE		☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED		
☐ JAIL	USING DRUGS			☐ NO ☐ YES ☐ UNK		TYPE:		☐ UNK		☐ ARRESTED ON CURRENT OFFENSE		
☐ Other										☐ CLEARED BY ARREST ON PRIOR OFFENSE		
ARRESTEE ARMED ☐ YES ☐ NO WEAPON TYPE:												
☐ ON VIEW ARREST ☐ SUMMONED ☐ CUSTODY												
JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY												
Arrest Location: SEE ORIGINAL												

NARRATIVE

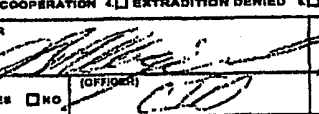
I RESPONDED TO THE COMP.'S (VICTIM'S MOTHER) RESIDENCE IN REFERENCE TO A SEXUAL ASSAULT THAT OCCURRED APPROX. 14-15 YEARS AGO AT THE INCIDENT LOCATION. THE COMP. AND HER HUSBAND (DOUG PARIS, AVON DR.) WERE TALKING ABOUT RECENT NEWS WITH THE VICTIM (THE COMP.'S DAUGHTER). THE COMP. AND HER HUSBAND TALKED ABOUT THE SUBJECT'S (SHAWN DAILY) SEXUAL ASSAULT CASES THAT ARE PENDING. THE COMP. THEN BROUGHT UP THAT SHE USED TO WORK WITH THE SUBJECT (SHAWN) AT MED-SHORE AMBULANCE SERVICE A LONG TIME AGO. THIS NEWS BROUGHT THE VICTIM TO TEARS AS SHE REMEMBERED THAT 14 OR 15 YEARS AGO SHE WAS IN THE BATHROOM AT THE INCIDENT LOCATION AND THE SUBJECT TOUCHED HER ON THE VAGINA AND THEN PUT HER HAND ON HIS EXPOSED PENIS. THE VICTIM STATED THE INCIDENT POSSIBLY LASTED FOR 10 TO 15 MINUTES.

THE VICTIM TOLD ME SHE HAD BEEN SCARED TO REPORT THE INCIDENT BECAUSE SHE SAID IT FELT LIKE A "BAD DREAM" AND THAT MAYBE IT DID NOT HAPPEN, BUT NOW THE VICTIM WAS SURE IT HAD HAPPENED.

THE VICTIM WAS ADVISED SEXUAL ASSAULT INVESTIGATORS WOULD BE IN TOUCH WITH HER AND SHE WAS GIVEN A VICTIM/WITNESS FORM.

B04 (SGT. ALLIGOOD) WAS NOTIFIED.

VEHICLE	☐ STOLEN	TAG NUMBER	STATE	YEAR	V.I.N.	SEE ORIGINAL	CLERK OF COURT SPARTANBURG COUNTY AMY W. COX	2019 SEP 10 AM 10:33	FILED
	☐ RECOVERED	YEAR	MAKE	MODEL	STYLE	COLOR			
	☐ SUSPECT	TAG ONLY	ADDITIONAL VEHICLE DESCRIPTION						
	☐ VICTIM								

PROPERTY	Status	Property Type	Quantity	Property Make	Color	Description	Serial #	Value		
						SEE ORIGINAL				
ADMIN	SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADMIN. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEARED UNDER 18 ☐ EX-CLEARED 18 AND OVER	
	☐ YES ☐ NO		☐ YES ☐ NO							
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ VICTIM/DECLINES COOPERATION 4. ☐ EXTRADITION DENIED 5. ☐ JUVENILE-NO ARREST									
	REPORTING OFFICER(S)		DATE	Unit # / Size	APPROVING OFFICER		DATE	Unit # / Size		
GRIFFIN, B.		2/14/09	B22	 (OFFICER)		2-15-09	JP			

203

15 FEB 07 53

OF AGENCY I.D.
SCO230000

GREENVILLE COUNTY SHERIFF'S OFFICE
SUPPLEMENTAL REPORT

CASE NUMBER
019000026933

☐ ORIGINAL REPORT	☐ STATUS CHANGE	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	INCIDENT TYPE	CSC Investigation
☒ SUPPLEMENTAL REPORT	☐ OTHER REPORT	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	PATROL DISTRICT	02
				PAGE	1 OF 1 PAGES

I.D. OVERFLOW	☒ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	PAGE	AGE	D.O.B.
	☐ VICTIM #	Paris, Deidra		#1	#2	#3	W	F	46	
	☐ WITNESS	ADDRESS		CITY	STATE	ZIP CODE	PROCL. DISTRICT	DAY PHONE	N	EVENING PHONE
	☐ RUNAWAY	Avon Drive		Taylors	SC	29687	02			
☐ WANTED	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.					
☐ WARRANT	☐ VICTIM NO.	VISIBLE INJURY:		COMPLAINT OF NON-VISIBLE INJURIES:		VICTIM USING ALCOHOL:		☐ TWO-MAN VEHICLE ☐ DETECTIVE ☐ ALONE		
☐ ARREST	EXPLAIN:	☐ YES ☐ NO		☐ NO ☐ YES		☐ NO ☐ YES TYPE		☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED		
☐ MISSING	SUBJECT NO.	USING ALCOHOL		☐ NO ☐ YES ☐ UNK		☐ DRUGS: ☐ NO ☐ YES TYPE		☐ UNK		
☐ JAIL	USING DRUGS		☐ NO ☐ YES		TYPE:		☐ UNK		☐ ARRESTED ON CURRENT OFFENSE	
☐ Other									☐ CLEARED BY ARREST OR PRIOR OFFENSE	
ARRESTEE ARMED ☐ YES ☐ NO WEAPON TYPE:										
☐ ON VIEW ARREST ☐ SUMMONED ☐ CUSTODY										
JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY										
Arrest Location:										
Suspect: Daily, Shawn Torlif, W/M, 36 yoa, DOB: -1972.										
On Monday February 23, 2009, this inv. went to Spartanburg Detention Center and was able to speak with Shawn Daily. Mr. Daily is being held on a sexual assault case and he is presently waiting on a bond hearing.										
Mr. Daily was read his Miranda warning of which he stated he understood. He stated his educational level extended to some college. He signed the warning stating that he understood his rights. This inv. advised the suspect of the complaint I was investigating. The victim's mother's name was mentioned as a focal point but he stated he didn't remember the name.										
Mr. Daily stated he did work for Med Shore Ambulance Service at one time. He worked there for a couple of years.										
When advised that he was accused of touching a minor child in her genital area, he stated he had no idea of who this is making a complaint nor did he have any memory of going to the location where this incident took place.										
Mr. Daily stated that he had an attorney, Jeff Merriam, and any thing dealing with statements on any allegation should be addressed to his attorney.										
Mr. Daily would not talk any more about the matter. Inv. to continue.										
VEHICLE	☐ STOLEN	TAG NUMBER	STATE	YEAR	V.I.N.					
	☐ RECOVERED	YEAR	MAKE	MODEL	STYLE					
	☐ SUSPECT	ADDITIONAL VEHICLE DESCRIPTION								
	☐ VICTIM									
PROPERTY	Status	Property Type	Quantity	Property Make	Color	Description	Serial #	Value		
ADMIN	SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADMIN. CLOSED		☐ ARRESTED UNDER 18		☐ EX-CLEARED UNDER 18	
	☐ YES ☐ NO		☐ YES ☐ NO		☐ UNFOUNDED		☐ ARRESTED 18 AND OVER		☐ EX-CLEARED 18 AND OVER	
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENSE DEATH, 2. ☐ NO PROSECUTION, 3. ☐ VICTIM/DECLINED COOPERATION 4. ☐ EXTRADITION DENIED 5. ☐ JUVENILE-NO ARREST									
	REPORTING OFFICER(S)	DATE	LINE #/Sgt	APPROVING OFFICER	DATE	LINE #/Sgt				
Austin, Jim *0011	02-23-09	625	McNamara, M. Sgt. *242	02-23-09	603					
FOLLOWUP INVESTIGATION			OFFICER							
☐ YES ☐ NO										

2019 SEP 10 AM 10:30
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COOK
FILED

OF AGENCY I.D.
SCO230000

GREENVILLE COUNTY SHERIFF'S OFFICE
SUPPLEMENTAL REPORT

CASE NUMBER
0190000216193131

☐ ORIGINAL REPORT	☐ STATUS CHANGE	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	INCIDENT TYPE	CSC Investigation
☒ SUPPLEMENTAL REPORT	☐ OTHER REPORT	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	PATROL DISTRICT	02
				PAGE	1 OF 1 PAGES

I.D. OVERFLOW	☒ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.		
	☐ VICTIM #	Paris, Deidra		#1	#2	#3	W	F	46				
	☐ SUBJECT #	ADDRESS		CITY	STATE	ZIP CODE	PATROL DISTRICT	DAY PHONE	N	EVENING PHONE	N		
	☐ RUNAWAY	. Avon Drive		Taylors	SC	29687	02						
	☐ WANTED	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
	☐ WARRANT	VICTIM NO.		VISIBLE INJURY:	COMPLAINT OF NON-VISIBLE INJURIES:	VICTIM USING ALCOHOL:	NO	YES	UNK.	TWO-MAN VEHICLE		DETECTIVE	ALONE
	☐ ARREST	EXPLAIN:		YES	NO	NO	YES	UNK.	ONE-MAN VEHICLE		OTHER	ASSISTED	
	☐ MISSING	SUBJECT NO.		USING ALCOHOL	NO	YES	UNK.	ARRESTED ON CURRENT OFFENSE					
	☐ JAIL			USING DRUGS	NO	YES	UNK.	Cleared by Arrest on Prior Offense					
	☐ Other												
NARRATIVE	ARRESTEE ARMED ☐ YES ☐ NO WEAPON TYPE:												
	JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY												
	Arrest Location:												
	Suspect: Dally, Shawn Tortif, W/M, 36 yoa, DOB: 1972.												
	On Monday February 16, 2009, Minor 4 came to LEC and met with this inv. to give a statement on the alleged sexual assault committed on her by the listed suspect.												
	Ms. J. gave this account of what she remembered taking place. The alleged suspect was a co worker of the victim's mother at Med Shore Ambulance Service at the time of this incident. The suspect was visiting the victim's mother. The incident from all accounts happened sometime around 1992 and 1993. The victim was about four years old. The victim couldn't remember where her mother was at the time. The suspect took her in the bathroom. She remembers the suspect taking his pants down and sitting on the toilet. She didn't remember how her panties got down but they were down and the suspect was rubbing on her vagina. She remembers the suspect making her touch his penis. She stated she didn't think the suspect penetrated her. The victim's memory was vague on some of the incident. She gave her best account of what took place. She did remember this being a one time incident.												
	The victim states she went to her mother's house for Valentines Day, February 14, 2009. While there they were watching the news about a little girl getting kidnapped. Her mother mentioned the name of the suspect and asked her did she remember him. She states that she went into a little shock. She told her mother that she did remember the suspect and that she didn't want to talk about him. Her mother told her she had to talk about it. She stated that she disclosed to her mother what she remembered happening to her. Her mother told her that the suspect is presently charged on some sexual assaults. She called the police and made a report.												
	The victim was advised that this case would be investigated because there's no statute of limitation on sexual assaults. She should be prepared that the suspect would probably deny the allegation. Inv. to continue.												
	VEHICLE	☐ STOLEN	TAG NUMBER	STATE	YEAR	V.I.N.	VALUE						
		☐ RECOVERED	YEAR	MAKE	MODEL	STYLE	COLOR						
☐ SUSPECT		ADDITIONAL VEHICLE DESCRIPTION											
☐ VICTIM													
PROPERTY	Status	Property Type	Quantity	Property Make	Color	Description	Serial #	Value					
ADMIN	SUBJECT IDENTIFIED		SUBJECT LOCATED		ACTIVE		ADMIN. CLOSED		ARRESTED UNDER 18		EX-CLEARED UNDER 18		
	☐ YES ☐ NO		☐ YES ☐ NO		☐ UNFOUNDED		☐ UNFOUNDED		☐ ARRESTED 18 AND OVER		☐ EX-CLEARED 18 AND OVER		
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENSES DENIED 2. ☐ NO PROSECUTION 3. ☐ VICTIM/AGGRIEVED COOPERATION 4. ☐ EXTRADITION DENIED 5. ☐ JUVENILE-NO ARREST												
	REPORTING OFFICER(S)		DATE		Unit # / Sqr #	APPROVING OFFICER		DATE		Unit # / Sqr #			
	Austin, Jim *0011		02-16-09		625	McNamara, M. Sgt. *242		02-16-09		603			

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

VICTIM 5: UNIDENTIFIED
VICTIM(S)

FILED

2019 SEP 10 AM 10:31

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

APR. 25. 2008 9:20AM
DEPARTMENT
800420100

SPRING PUBLIC SAFETY
INCIDENT REPORT

INFORMATION
ONLY

CASE NO. 862
04009506

NCIC
INC. No. INTD. No.

INCIDENT TYPE				COMPLETED	FORCED ENTRY	PREMISE TYPE	UNIT ENTERED	TYPE VICTIM
INFORMATION ONLY 904 INFORMATION ONLY; ALL OTHER NONREPORTABLE REPORTS				YES NO	YES NO	OTHER/UNKNOWN		Individual Business Financial Inst. Government Relig. Orgn. Soc./Public Other Unknown Police Off.
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE		WEAPON TYPE		
PINE ST, SPARTANBURG, SC				29301-				
INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK	TIME ARRIVED	DEPART TIME	LOCATION NO.
04/01/2008	13:30		04/01/2008	14:00	04/01/2008	14:18	14:22	3
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
RHODES, MARIE					S	W	F	18 / 22
ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	
1 WPEACHTREE ST				WOODRUFF	SC	29388-		
VICTIM'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
UNKNOWN					U	W	F	8 / 10
EIGHT				WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.	
ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	
SEX/ENLURY (MCT) YES NO EXPLAIN-				COMPLAINT OF ANY NON-RESIDENTS YES NO				
CTM (NO. 1) USING ALCOHOL YES NO UNK				DRUGS: YES NO UNK TYPE				
NON-MANVER				ONE-MANVER				
NAME (LAST, FIRST, MIDDLE)				RACE	SEX	AGE	ETH	DATE OF BIRTH
DAILY, SHAWN				W	M	34 /	N	02/15/1972
FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.				DAYTIME PHONE		EVENING PHONE		
				884-578-9222		884-596-2800		
ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	
GLENWOOD HILLS DR				SPARTANBURG	SC	29307-		
SUBJECT NO. 1 USING ALCOHOL YES NO UNK				ARRESTED NEAR OFFENSE SCENE YES NO		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST
DRUGS: YES NO UNK TYPE				TOTAL # ARRESTED		04/01/2008 1:30:00 PM		04/01/2008 1:30:00 PM
DAY OF THE WEEK				HOW REPORTED		A= OFFICER DISPATCHED ON CALL		D= COMPLAINT WRITTEN IN
S M T W T F S UNK						B= REPORT TAKEN BY PHONE		E= OFFICER INITIATED
						C= COMPLAINANT WALKED IN		F= OTHER
ORIGINAL - COE J P								

ON 04-01-2008 I WAS DISPATCHED TO THE YMCA IN REFERENCE TO A SEXUAL ASSAULT. UPON ARRIVAL I SPOKE TO MARIE RHODES AN EMPLOYEE OF THE YMCA.

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY			
TYPE (GROUP)							TOTAL VALUE
STOLEN							0
DAMAGED							0
BURNED							0
RECOVERED							0
SEIZED							0
SUBJECT IDENTIFIED YES NO		SUBJECT LOCATED YES NO		S. F.		ACTIVE ADM. CLOSED	
						ARRESTED UNDER 18	
						EX-CLEAR UNDER 18	
REASON FOR EXCEPTIONAL CLEARANCE 1. OFFENDER DEATH 2. NO PROSECUTION 3. EXTRADITION DENIED 4. VICTIM DECLINES COOPERATION 5. JUVENILE NO DISTRICT							
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER
COE, J P		04/01/2008 2:15:00	0048				
				FOLLOWUP INVESTIGATION YES NO			

AGENCY: SPARTANBURG PUBLIC
ORI #:

INCIDENT REPORT

04/25/08 09:25 Pg: 1

ax from : 864 596 2152

OCA Number: 04009506

Entered By: SUSAN PERSONS, On 04/04/2008 10:50:18 PM
Jurisdiction: SC0420100
Case Number: 04009506
Supplement: No
Source Table: RMS_Case

Title: SUPPLEMENTAL - COE, JP

ON 04-01-2008 I RESPONDED TO THE YMCA IN REFERENCE TO A SEXUAL ASSAULT. UPON ARRIVAL I SPOKE WITH MARIE RHODES AN EMPLOYEE OF THE YMCA. MS RHODES STATED THAT A WHITE MALE SHE BELIEVES TO BE SHAWN DAILY BROUGHT A YOUNG GIRL BETWEEN THE AGES OF 8 AND 10 INTO THE POOL AREA. WHEN THE YOUNG GIRL GOT OUT OF THE POOL SHE WAS HOLDING HERSELF AND SCREAMING. THE WHITE MALE TOOK THE GIRL INTO THE MENS LOCKER ROOM WHERE ANOTHER LIFEGUARD AND YMCA CO-WORKER FOUND HIM CORNERING THE CHILD AND YELLING AT HER. THE EMPLOYEES OF THE YMCA ASKED HIM TO LEAVE THE LOCKER ROOM. THE WHITE MALE THEN TOOK THE GIRL AND LEFT THE PREMISES. THE YMCA WAITED 20 MINUTES AFTER THE MALE AND YOUNG GIRL HAD LEFT THE PREMISES TO CALL THE POLICE. MS RHODES THEN GAVE US COPIES OF FOUR PREVIOUS YMCA INTERNAL REPORT OF MEMBER/PARTICIPANT ACCIDENT FORMS DATING BACK TO 08-15-2005. WE HAVE ONE REPORT THAT IS DATED 08-15-2005, ANOTHER DATED 10-27-2005, AND ANOTHER ONE THAT IS UNDATED THAT THE EMPLOYEES OF THE YMCA ALLEGE HAPPENED DURING THE MONTH OF MARCH 2008. NONE OF THE THREE PREVIOUS INCIDENTS HAD BEEN REPORTED TO THE POLICE BY THE YMCA. FOR THE INCIDENT ON 08-15-2005 THE EMPLOYEE OF THE YMCA STATED THAT WHEN SHE GOT TO WORK AT 1625 HRS THE MALE HAD A GIRL BETWEEN THE AGES OF 8 AND 10 WITH HIM IN THE DEEP END OF THE POOL. HE HELD HER FRONT TO FRONT WITH HER BACK TO THE WALL AND HER LEGS AROUND HIS WAIST FOR 10 MINUTES. HE THEN TOOK THE GIRL TO THE BIG POOL BUT DID NOT GET IN HIMSELF. HE HELPED HER PULL UP HER SUIT BOTTOM IN THE FRONT UP TO HER BELLY BUTTON. HE TOOK FOUR TO FIVE SECONDS ADJUSTING IT. THEY WENT BACK TO THE SMALL POOL. WHEN THE GIRL GOT OUT OF THE POOL HE TOOK HER TO THE METAL BLEACHERS TO DRY OFF. HE SAT DOWN AND SHE STOOD BETWEEN HIS KNEES WHILE HE DRIED HER WHOLE BODY WITH TWO TOWELS. HE SPENT THIRTY SECONDS OR MORE DRYING HER BOTTOM WITH HIS HANDS USING THE TOWEL. HE THEN DRIED EACH LEG AND THEN PUT THE TOWEL BETWEEN HER LEGS. HE LIFTED THE TOWEL IN THE FRONT AND BACK USING A SAWING MOTION TRYING TO DRY HER. HE THEN DRIED HER BOTTOM ONCE MORE, WRAPPED HER UP IN TWO TOWELS AND WENT OUT THE DOOR. KELLI SEAWELL AND STEPHANIE HALL (YMCA EMPLOYEES) SAW HIM TWENTY MINUTES LATER COMING OUT OF THE HALL WHERE THE FAMILY DRESSING ROOMS ARE AND THEY THEN LEFT THE YMCA. FOR THE NEXT INCIDENT DATED 10-27-2005 THE EMPLOYEES OF THE YMCA STATED THAT A MAN BROUGHT IN A YOUNGER GIRL TO THE POOL. WHILE SWIMMING THE MAN TOUCHED THE GIRL SEVERAL TIMES ON THE BUTT AND SQUEEZED HER BUTT MANY TIMES WHILE PLAYING WITH HER. LATER AS THEY WERE ABOUT TO GET OUT OF THE POOL THE MAN PUT THE GIRL ON HIM WHERE SHE WAS STRADDLING HIM FOR ABOUT TEN MINUTES AS THEY WALKED AROUND THE POOL. THEY FINALLY GOT OUT. FOR THE NEXT UNDATED INCIDENT THE YMCA EMPLOYEES STATED THAT HE WAS PLAYING WITH HER AND TOUCHING HER BOTTOM AND RUBBING HER BODY. THIS OCCURRED SEVERAL TIMES OFTEN ENDING UP IN THE CORNER STRADDLING ONE ANOTHER. WHEN GETTING OUT HE DRIED HER OFF RUBBING THE TOWEL UP AND DOWN HER LEG A LONG PERIOD OF TIME. THEN THEY WENT INTO THE FAMILY CHANGING ROOM TOGETHER AND WERE IN THERE FOR TEN MINUTES. EMPLOYEES OF THE YMCA WERE UNABLE TO TELL US IF THIS WAS THE SAME GIRL FOR ALL OF THESE INCIDENTS OR DIFFERENT GIRLS. THE EMPLOYEES OF THE YMCA BELIEVE THAT SHAWN DAILY IS THE MALE INVOLVED IN THE INCIDENTS BUT ARE NOT CERTAIN. WE HAVE NO FURTHER INFORMATION ON THE IDENTITY OF THE GIRL. THE YMCA INTERNAL REPORT OF MEMBER/PARTICIPANT ACCIDENT FORMS WERE PLACED INTO EVIDENCE. THE YMCA EMPLOYEES WERE ADVISED TO NOTIFY POLICE AS SOON AS THE

FILED

2019 SEP 10 AM 10:31

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

OCA Number: 04009508

Entered By: H D FORRESTER, On 04/05/2006 11:13:58 AM

Edited By: H D FORRESTER, On 04/13/2003 9:13:10 AM

Jurisdiction: SC0420100

Case Number: 04009508

Supplement: No

Source Table: RMS_Case

Title: INV FORRESTER SUPPLEMENTAL

FILED
2019 SEP 10 AM 10:31
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

ON 04-04-06 I WAS ASSIGNED THIS CASE.

0900HRS--I CALLED MR SHAWN DAILY AND ADVISED HIM THAT I NEEDED TO SPEAK TO HIM IN REFERENCE TO THIS INCIDENT. HE STATED THAT HE ALREADY KNEW WHY I WAS CALLING BECAUSE TWO LIFEGUARDS HAD APPROACHED HIM ON SATURDAY AT THE YMCA. HE STATED THAT HE WANTED TO CONSULT AN ATTORNEY BEFORE HE CAME FOR AN INTERVIEW. HE STATED THAT HE WOULD CALL ME BACK AFTER HAVING DONE SO.

1000HRS--I SPOKE WITH MARIE RHODES, ONE OF THE LIFEGUARDS THAT FILED A COMPLAINT ON MR DAILY. SHE STATED THAT SHE COULD NOT COME TODAY TO GIVE A STATEMENT BUT WOULD COME TOMORROW 4-8-06 AROUND 1330HRS WHEN SHE LEFT THE YMCA. I AGREED.

1020HRS--I RETRIEVED THE YMCA INTERNAL REPORTS FROM EVIDENCE DOCUMENTING REPORTS THAT DATED BACK TO 09-05. THESE COPIES WERE PLACED IN THE CASE FILE.

1200HRS--MR DAILY CALLED BACK AND STATED THAT HE WOULD BE AT CITY HALL BETWEEN 1400-1430HRS TO GIVE A STATEMENT.

1428HRS--MR DAILY ARRIVED AT CITY HALL. I READ HIM HIS MIRANDA RIGHTS BEFORE THE STATEMENT WAS TAKEN. MR DAILY AGREED TO QUESTIONING WITHOUT A LAWYER AND SIGNED A PRE-INTERROGATION WAIVER FORM. THE FORM WAS PLACED INTO EVIDENCE AT CITY HALL. MR DAILY STATED THAT FEMALE CHILD HE WAS WITH IS ^{Minor 3} HE STATED THAT ^{Minor 3} IS HIS BEST FRIENDS CHILD. THE MOTHERS NAME IS CLAIRE B. HE STATED THAT HE HAS KNOWN ^{Minor 3} SINCE SHE WAS BORN AND HAS BABY SAT FOR ^{Minor 3} MANY TIMES, BUT HAS ONLY TAKEN HER TO THE YMCA A COUPLE OF TIMES. HE STATED THAT WHILE THEY WERE IN THE POOL ^{Minor 3} HAD KNOCKED OFF A SCAB THAT WAS ON HER LEG WHILE SWIMMING IN THE POOL AND SHE STARTED CRYING. THEY WERE IN THE DEEP END OF THE POOL AND THAT IS WHY SHE WAS HANGING ON TO HIM BECAUSE SHE DOES NOT KNOW HOW TO SWIM. HE STATED THAT HE GOT HER OUT AND SHE WAS "HOLDING" HER PRIVATE AREA BECAUSE SHE HAD TO GO TO THE BATHROOM. HE STATED THAT HE DRIED HER OFF AND HE WENT INTO THE MALE LOCKER ROOM AND MADE SURE NOONE WAS IN THERE. HE THEN TOOK ^{Minor 3} INTO THE LOCKER ROOM WHERE SHE CHANGED CLOTHES. HE STATED THAT SHE WAS "PITCHING A FIT" AND HE WAS IN A HURRY TO LEAVE THE Y. HE STATED THAT HE THEN WALKED AROUND THE CORNER SO THAT HE COULD CHANGE CLOTHES OUT OF HER SIGHT. HE STATED THATS WHEN HE WAS APPROACHED BY THE TWO LIFEGUARDS. HE STATED THAT THEY LEFT. HE STATED THAT HE DID TELL CLAIRE, MOTHER, ABOUT THE INCIDENT THAT OCCURED. MR DAILY ALSO STATED THAT HE HAS ALSO TAKEN HIS GIRLFRIENDS DAUGHTER, ^{Minor 1} TO THE YMCA. HE STATED THAT THE MOTHER IS JENNIFER H. I ASKED HIM FOR CONTACT INFO AND HE WOULD NOT GIVE IT TO ME. HE STATED THAT SHE WAS OUT OF TOWN BUT STATED THAT SHE LIVED IN THE WESTGATE AREA AROUND FUDDRUCKERS.

1600HRS--I WENT TO PARK PLACE APTS AND SPOKE WITH THE MANAGER. SHE STATED THAT MS H/ WAS A RESIDENC THERE AND GAVE ME HER CONTACT INFORMATION. I WAS UNABLE TO MAKE CONTACT WITH MS H/. THERE WERE ALSO MANY FLYERS ON HER APT DOOR. IT APPEARED THAT SHE HAD NOT BEEN HOME FOR SEVERAL DAYS.

04-05-06 1600HRS--I CALLED KELLI SEAWELL SHE STATED THAT SHE WAS SPEAKING WITH THE OTHER LIFEGUARDS AND THEY WILL BE CONTACTING ME IN REFERENCE TO GIVING ME A STATEMENT. MS SEAWELL STATED THAT SHE WILL BE COMING IN ON FRIDAY AROUND 1330HRS TO GIVE A STATEMENT.

04-07-06 100HRS--I SPOKE WITH THE MOTHER OF ^{Minor 1} JENNIFER H. SHE ADVISED THAT THIS REPORT WAS "STUPID" AND THAT SHE WAS NOT COOPERATING UNTIL SHE SPOKE WITH HER LAWYER JOHN WHITE JR. I GAVE HER MY CONTACT NUMBERS AFTER SHE HAD DONE SO.

04-11-06 0800HRS--INV BRADLEY AND MYSELF WENT TO ^{Minor 3} FLATWOOD LANE OFF OF HWY 221 TO SPEAK WITH ^{Minor 3} PARENTS. NOONE WAS HOME BUT I DID LEAVE MY CARD IN THE DOOR WITH MY CONTACT NUMBERS.

1200HRS--MS H/ CALLED ME BACK AND STATED THAT SHE HAS MET WITH HER LAWYER AND WAS ADVISED NOT TO WRITE A STATEMENT OR INVOLVE HER DAUGHTER AT THIS POINT.

ALSO MS SEAWELL CALLED ME AND STATED THAT SHE WAS UNABLE TO MAKE IT FRIDAY BECAUSE HER DAUGHTER WAS SICK. SHE LEFT A MESSAGE ON MY VOICE MAIL STATING THAT SHE WOULD TRY AND COME TODAY.

1220HRS--I CALLED TO SPEAK WITH THE DIRECTOR OF THE YMCA, RICK CALEB. I DID NOT GET AN ANSWER BUT LEFT A VOICE MESSAGE WITH MY CONTACT NUMBERS FOR HIM TO RETURN MY CALL IN REFERENCE TO THIS MATTER. I OBTAINED THE INTERNAL REPORTS FROM THE YMCA THAT HAVE BEEN DATED BACK TO 9-05. MR DAILEYS NAME IS NOT MENTIONED IN THESE REPORTS EXCEPT FOR THE ONE ON 4-1-06. I NEEDED TO KNOW HOW THESE REPORTS ENDED UP IN MR DAILEYS FILE WITH ONLY "THIS MAN" AS AN IDENTIFIER.

04-12-06 0830HRS--CLAIRE B. THE MOTHER OF ^{Minor 3} CALLED ME IN THE OFFICE. I ASKED HER IF SHE WOULD LIKE TO WRITE A STATEMENT ON WHAT SHE BELIEVES TO BE THE FACTS IN THIS CASE. SHE STATED THAT SHE DOES NOT WISH TO WRITE A STATEMENT NOR IS SHE GOING TO INVOLVE HER CHILD WITH THE CAC. SHE ADVISED THAT HER CHILD IS VERY OPEN WITH HER AND WILL NOT EVEN ALLOW DAY CARE WORKERS TO PUT RASH CREAM ON HER "PRIVATE AREA". SHE STATED THAT ^{Minor 3} VOLUNTEERS TO GO WITH SHAWN AND HAS EVEN REQUESTED TO STAY WITH HIM. SHE STATED THAT SHE HAS SPOKEN WITH ^{Minor 3} IN DEPTH ABOUT PEOPLE "TOUCHING" HER AND ^{Minor 3} HAS NEVER EXPRESSED THAT ANYONE HAS EVER "TOUCHED" HER. SHE STATED THAT HER DAUGHTER HAS A VERY LOW PAIN TOLERANCE AND SHE WAS CRYING BECAUSE SHE HAD SCRAPED OFF A SCAB ON HER KNEE AND SHE WAS HOLDING HERSELF IN HER PRIVATE AREA BECAUSE SHE HAD TO GO TO THE BATHROOM. SHE STATED THAT SHE WAS VERY SATISFIED THAT NOTHING IN PROPER HAD TAKEN PLACE.

Fax from : 864 596 2152

04/25/08 09:25 Pg: 4

0800HRS-I MET WITH THE CEO OF THE YMCA, JACK CALLEB. I ASKED HIM HOW THE REPORT THAT DID NOT GIVE A NAME NOR A DESCRIPTION BECAME ASSOCIATED WITH THE SUSPECT. HE STATED THAT HE COULD NOT ANSWER THAT. HE FURTHER STATED THAT HE HAD INTERVIEWED EACH OF THE LIFEGUARDS AND ONLY ONE, ANDREW DOBBINS, HAD EVER ACTUALLY SAW THE SUSPECT TOUCH A CHILD INPROPERLY. I ASKED HIM WHAT ANDREW SAID THE CIRCUMSTANCES WERE DURING THE INCIDENT. HE STATED THAT ANDREW STATED THAT THE SUSEPCT WAS HOLDING THE CHILD IN THE WATER BY HER BOTTOM AND THREW HER UP IN THE AIR. MR CALLEB STATED THAT HE DID NOT FEEL THAT WAS INPROPER. MR CALLEB STATED THAT STEPHANIE ADVISED HIM THAT SHE SAW A "FORIEGN" GUY ADN ANOTHER REPORT STATED THAT THE SUSEPCT WAS A MAN OF AVERAGE HEIGHT. THE SUSPECT IS 6'5.

MR CALLEB STATED THAT IN JOSH ORIGINAL REPORT HE STATED THAT HE SAW THE SUSPECT CORNER THE CHILD IN THE MENS LOCKER ROOM AND WAS SCREAMING AT HER. JOSH RECANTED THAT STATEMENT AND ADVISED THAT HE NEVER OBSERVED THAT SUSPECT YELLING AT THE CHILD. HE STATED THAT ALL THE LIFEGUARDS ONLY FELT LIKE SOMETHING WAS GOING ON BUT NOONE HAD EVER SEEN ANY INPROPER BEHAVIOR.

MR CALLEB DID GIVE ME A PRINT OUT OF THE INTERVIEWS WITH ALL THE LIFEGUARDS AND IT WAS PLACED INTO THE CASE FILE. HE ALSO GAVE ME A PRINTOUT OF THE TIMES THE SUSPECT CHECKED INTO THE YMCA. THE SUSEPCT WAS THERE DURING THE TIMES OF THE INCIDENT REPORTS WITHIN THE YMCA.

04-12-08 1430HRS--SHAWN DAILEY CALLED ME AND STATED THAT HE WAS ADVISED BY HIS LAWYER NOT TO TAKE A POLYGRAPH.

04-13-08 0800HRS--I MET WITH TONY LEIBERT IN THE SOLICITORS OFFICE. I WENT OVER ALL THE EVIDENCE THAT I HAD IN THIS CASE. HE STATED THAT AT THIS TIME PROSECUTION IS DENIED DUE TO LACK OF EVIDENCE.

THIS CASE IS UNFOUNDED.

FILED

2019 SEP 10 AM 10:31

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

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

PETITIONER'S EXHIBIT

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SPARTANBURG COUNTY
AMY W. COX

SP Multi-Disciplinary Team
Daily Shawn - 339909
Page 3

HEALTH INFORMATION AND HISTORY:

Physical Health/Condition: None
Medications:
Other Information:

MENTAL HEALTH INFORMATION AND HISTORY:

Diagnosis:
Medications:
Problems/Compliance: N/A
Treatment History:
Other Information:

SOCIAL HISTORY: N/A

Inmate's History of Sexual Abuse (age at time of abuse, age of perpetrator
Length of abuse, relationship to perpetrator, gender of perpetrator):

Juvenile History: N/A
Other Information:

SEX OFFENDER TREATMENT HISTORY: None in the file

	TYPE	DATES	STATUS
--	------	-------	--------

Phase I:

SOTP

Phase II:

Phase III: Education

OTHER

RTU: Intensive Residential
Treatment

Admission of Sex Offense(s):
Other Information:

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

PETITIONER'S EXHIBIT

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SPARTANBURG COUNTY
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Development and Course

Individuals with sexual sadism in forensic samples are almost exclusively male, but a representative sample of the population in Australia reported that 2.2% of men and 1.3% of women said they had been involved in bondage and discipline, "sadomasochism," or dominance and submission in the previous year. Information on the development and course of sexual sadism disorder is extremely limited. One study reported that females became aware of their sadomasochistic orientation as young adults, and another reported that the mean age at onset of sadism in a group of males was 19.4 years. Whereas sexual sadism per se is probably a lifelong characteristic, sexual sadism disorder may fluctuate according to the individual's subjective distress or his or her propensity to harm nonconsenting others. Advancing age is likely to have the same reducing effect on this disorder as it has on other paraphilic or normophilic sexual behavior.

Differential Diagnosis

Many of the conditions that could be differential diagnoses for sexual sadism disorder (e.g., antisocial personality disorder, sexual masochism disorder, hypersexuality, substance use disorders) sometimes occur also as comorbid diagnoses. Therefore, it is necessary to carefully evaluate the evidence for sexual sadism disorder, keeping the possibility of other paraphilias or mental disorders as part of the differential diagnosis. The majority of individuals who are active in community networks that practice sadistic and masochistic behaviors do not express any dissatisfaction with their sexual interests, and their behavior would not meet DSM-5 criteria for sexual sadism disorder. Sadistic interest, but not the disorder, may be considered in the differential diagnosis.

Comorbidity

Known comorbidities with sexual sadism disorder are largely based on individuals (almost all males) convicted for criminal acts involving sadistic acts against nonconsenting victims. Hence, these comorbidities might not apply to all individuals who never engaged in sadistic activity with a nonconsenting victim but who qualify for a diagnosis of sexual sadism disorder based on subjective distress over their sexual interest. Disorders that are commonly comorbid with sexual sadism disorder include other paraphilic disorders.

Pedophilic Disorder

Diagnostic Criteria

302.2 (F65.4)

- A. Over a period of at least 6 months, recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children (generally age 13 years or younger).
- B. The individual has acted on these sexual urges, or the sexual urges or fantasies cause marked distress or interpersonal difficulty.
- C. The individual is at least age 16 years and at least 5 years older than the child or children in Criterion A.

Note: Do not include an individual in late adolescence involved in an ongoing sexual relationship with a 12- or 13-year-old.

Specify whether:

Exclusive type (attracted only to children)

Nonexclusive type

Specify if:

- Sexually attracted to males
- Sexually attracted to females
- Sexually attracted to both

Specify if:

- Limited to incest

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 AMY W. COX

Diagnostic Features

The diagnostic criteria for pedophilic disorder are intended to apply both to individuals who freely disclose this paraphilia and to individuals who deny any sexual attraction to prepubertal children (generally age 13 years or younger), despite substantial objective evidence to the contrary. Examples of disclosing this paraphilia include candidly acknowledging an intense sexual interest in children and indicating that sexual interest in children is greater than or equal to sexual interest in physically mature individuals. If individuals also complain that their sexual attractions or preferences for children are causing psychosocial difficulties, they may be diagnosed with pedophilic disorder. However, if they report an absence of feelings of guilt, shame, or anxiety about these impulses and are not functionally limited by their paraphilic impulses (according to self-report, objective assessment, or both), and their self-reported and legally recorded histories indicate that they have never acted on their impulses, then these individuals have a pedophilic sexual orientation but not pedophilic disorder.

Examples of individuals who deny attraction to children include individuals who are known to have sexually approached multiple children on separate occasions but who deny any urges or fantasies about sexual behavior involving children, and who may further claim that the known episodes of physical contact were all unintentional and nonsexual. Other individuals may acknowledge past episodes of sexual behavior involving children but deny any significant or sustained sexual interest in children. Since these individuals may deny experiences impulses or fantasies involving children, they may also deny feeling subjectively distressed. Such individuals may still be diagnosed with pedophilic disorder despite the absence of self-reported distress, provided that there is evidence of recurrent behaviors persisting for 6 months (Criterion A) and evidence that the individual has acted on sexual urges or experienced interpersonal difficulties as a consequence of the disorder (Criterion B).

Presence of multiple victims, as discussed above, is sufficient but not necessary for diagnosis; that is, the individual can still meet Criterion A by merely acknowledging intense or preferential sexual interest in children.

The Criterion A clause, indicating that the signs or symptoms of pedophilia have persisted for 6 months or longer, is intended to ensure that the sexual attraction to children is not merely transient. However, the diagnosis may be made if there is clinical evidence of sustained persistence of the sexual attraction to children even if the 6-month duration cannot be precisely determined.

Associated Features Supporting Diagnosis

The extensive use of pornography depicting prepubescent children is a useful diagnostic indicator of pedophilic disorder. This is a specific instance of the general case that individuals are likely to choose the kind of pornography that corresponds to their sexual interests.

Prevalence

The population prevalence of pedophilic disorder is unknown. The highest possible prevalence for pedophilic disorder in the male population is approximately 3%–5%. The population prevalence of pedophilic disorder in females is even more uncertain, but it is likely a small fraction of the prevalence in males.

Development and Course

Adult males with pedophilic disorder may indicate that they become aware of strong or preferential sexual interest in children around the time of puberty—the same time frame in which males who later prefer physically mature partners became aware of their sexual interest in women or men. Attempting to diagnose pedophilic disorder at the age at which it first manifests is problematic because of the difficulty during adolescent development in differentiating it from age-appropriate sexual interest in peers or from sexual curiosity. Hence, Criterion C requires for diagnosis a minimum age of 16 years and at least 5 years older than the child or children in Criterion A.

Pedophilia per se appears to be a lifelong condition. Pedophilic disorder, however, necessarily includes other elements that may change over time with or without treatment: subjective distress (e.g., guilt, shame, intense sexual frustration, or feelings of isolation) or psychosocial impairment, or the propensity to act out sexually with children, or both. Therefore, the course of pedophilic disorder may fluctuate, increase, or decrease with age.

Adults with pedophilic disorder may report an awareness of sexual interest in children that preceded engaging in sexual behavior involving children or self-identification as a pedophile. Advanced age is as likely to similarly diminish the frequency of sexual behavior involving children as it does other paraphilically motivated and normophilic sexual behavior.

Risk and Prognostic Factors

Temperamental. There appears to be an interaction between pedophilia and antisociality, such that males with both traits are more likely to act out sexually with children. Thus, antisocial personality disorder may be considered a risk factor for pedophilic disorder in males with pedophilia.

Environmental. Adult males with pedophilia often report that they were sexually abused as children. It is unclear, however, whether this correlation reflects a causal influence of childhood sexual abuse on adult pedophilia.

Genetic and physiological. Since pedophilia is a necessary condition for pedophilic disorder, any factor that increases the probability of pedophilia also increases the risk of pedophilic disorder. There is some evidence that neurodevelopmental perturbation in utero increases the probability of development of a pedophilic orientation.

Gender-Related Diagnostic Issues

Psychophysiological laboratory measures of sexual interest, which are sometimes useful in diagnosing pedophilic disorder in males, are not necessarily useful in diagnosing this disorder in females, even when an identical procedure (e.g., viewing time) or analogous procedures (e.g., penile plethysmography and vaginal photoplethysmography) are available.

Diagnostic Markers

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 used of such measures is *penile plethysmography*, although the sensitivity and specificity of diagnosis may vary from one site to another. *Viewing time*, using photographs of nude or minimally clothed persons as visual stimuli, is also used to diagnose pedophilic disorder, especially in combination with self-report measures. Mental health professionals in the United States, however, should be aware that possession of such visual stimuli, even for diagnostic purposes, may violate American law regarding possession of child pornography and leave the mental health professional susceptible to criminal prosecution.

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CLEVELAND COUNTY
SPARTANBURG COUNTY
AYAM COX

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Differential Diagnosis

Many of the conditions that could be differential diagnoses for pedophilic disorder also sometimes occur as comorbid diagnoses. It is therefore generally necessary to evaluate the evidence for pedophilic disorder and other possible conditions as separate questions.

Antisocial personality disorder. This disorder increases the likelihood that a person who is primarily attracted to the mature physique will approach a child, on one or a few occasions, on the basis of relative availability. The individual often shows other signs of this personality disorder, such as recurrent law-breaking.

Alcohol and substance use disorders. The disinhibiting effects of intoxication may also increase the likelihood that a person who is primarily attracted to the mature physique will sexually approach a child.

Obsessive-compulsive disorder. There are occasional individuals who complain about ego-dystonic thoughts and worries about possible attraction to children. Clinical interviewing usually reveals an absence of sexual thoughts about children during high states of sexual arousal (e.g., approaching orgasm during masturbation) and sometimes additional ego-dystonic, intrusive sexual ideas (e.g., concerns about homosexuality).

Comorbidity

Psychiatric comorbidity of pedophilic disorder includes substance use disorders; depressive, bipolar, and anxiety disorders; antisocial personality disorder; and other paraphilic disorders. However, findings on comorbid disorders are largely among individuals convicted for sexual offenses involving children (almost all males) and may not be generalizable to other individuals with pedophilic disorder (e.g., individuals who have never approached a child sexually but who qualify for the diagnosis of pedophilic disorder on the basis of subjective distress).

Fetishistic Disorder

Diagnostic Criteria

302.81 (F65.0)

- A. Over a period of at least 6 months, recurrent and intense sexual arousal from either the use of nonliving objects or a highly specific focus on nongenital body part(s), as manifested by fantasies, urges, or behaviors.
- B. The fantasies, sexual urges, or behaviors cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.
- C. The fetish objects are not limited to articles of clothing used in cross-dressing (as in transvestic disorder) or devices specifically designed for the purpose of tactile genital stimulation (e.g., vibrator).

Specify:

- Body part(s)**
- Nonliving object(s)**
- Other**

Specify if:

In a controlled environment: This specifier is primarily applicable to individuals living in institutional or other settings where opportunities to engage in fetishistic behaviors are restricted.

In full remission: There has been no distress or impairment in social, occupational, or other areas of functioning for at least 5 years while in an uncontrolled environment.

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

PETITIONER'S EXHIBIT

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SPARTANBURG COUNTY
AMY W. COX

Paraphilic Disorders

Paraphilic disorders included in this manual are voyeuristic disorder (spying on others in private activities), exhibitionistic disorder (exposing the genitals), frotteuristic disorder (touching or rubbing against a nonconsenting individual), sexual masochism disorder (undergoing humiliation, bondage, or suffering), sexual sadism disorder (inflicting humiliation, bondage, or suffering), pedophilic disorder (sexual focus on children), fetishistic disorder (using nonliving objects or having a highly specific focus on nongenital body parts), and transvestic disorder (engaging in sexually arousing cross-dressing). These disorders have traditionally been selected for specific listing and assignment of explicit diagnostic criteria in DSM for two main reasons: they are relatively common, in relation to other paraphilic disorders, and some of them entail actions for their satisfaction that, because of their noxiousness or potential harm to others, are classed as criminal offenses. The eight listed disorders do not exhaust the list of possible paraphilic disorders. Many dozens of distinct paraphilias have been identified and named, and almost any of them could, by virtue of its negative consequences for the individual or for others, rise to the level of a paraphilic disorder. The diagnoses of the other specified and unspecified paraphilic disorders are therefore indispensable and will be required in many cases.

In this chapter, the order of presentation of the listed paraphilic disorders generally corresponds to common classification schemes for these conditions. The first group of disorders is based on *anomalous activity preferences*. These disorders are subdivided into *courtship disorders*, which resemble distorted components of human courtship behavior (voyeuristic disorder, exhibitionistic disorder, and frotteuristic disorder), and *algotonic disorders*, which involve pain and suffering (sexual masochism disorder and sexual sadism disorder). The second group of disorders is based on *anomalous target preferences*. These disorders include one directed at other humans (pedophilic disorder) and two directed elsewhere (fetishistic disorder and transvestic disorder).

The term *paraphilia* denotes any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners. In some circumstances, the criteria "intense and persistent" may be difficult to apply, such as in the assessment of persons who are very old or medically ill and who may not have "intense" sexual interests of any kind. In such circumstances, the term *paraphilia* may be defined as any sexual interest greater than or equal to normophilic sexual interests. There are also specific paraphilias that are generally better described as *preferential* sexual interests than as intense sexual interests.

Some paraphilias primarily concern the individual's erotic activities, and others primarily concern the individual's erotic targets. Examples of the former would include intense and persistent interests in spanking, whipping, cutting, binding, or strangulating another person, or an interest in these activities that equals or exceeds the individual's interest in copulation or equivalent interaction with another person. Examples of the latter would include intense or preferential sexual interest in children, corpses, or amputees (as a class), as well as intense or preferential interest in nonhuman animals, such as horses or dogs, or in inanimate objects, such as shoes or articles made of rubber.

A *paraphilic disorder* is a paraphilia that is currently causing distress or impairment to the individual or a paraphilia whose satisfaction has entailed personal harm, or risk of harm, to

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	CASE #: 2019-CP-42-03230
	)	
IN THE MATTER OF THE	)	
CARE AND TREATMENT OF	)	ORDER OF COMMITMENT
SHAWN TORLIF DAILY,	)	
	)	
<u>RESPONDENT.</u>	)	

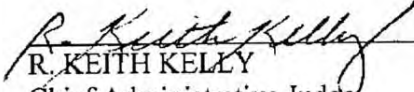
The trial of this case was held in the Spartanburg County Court of Common Pleas the week of March 14, 2022. A jury of citizens from Spartanburg County heard this case pursuant to a request for a jury trial filed by the State. The State was represented by Assistant Attorney General Christopher S. Runyan and Suzanne J. Shaw. The Respondent was represented by Don A. Thompson, Esquire. 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, Shawn Torlif Daily 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, Shawn Torlif Daily is committed to the South Carolina Department of Mental Health for his long-term control, care and treatment;
- (b) Respondent, Shawn Torlif Daily is to continue to be detained at the Spartanburg 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.


 R. KEITH KELLY
 Chief Administrative Judge
 Seventh Judicial Circuit
 Court of Common Pleas

2022 MAR 16 PM 4:29
 CLERK OF COURT
 SPARTANBURG COUNTY
 MAY 11, 2022

FILED

March 16, 2022
 Spartanburg, South Carolina

COUNTY OF SPARTANBURG
 STATE VS.
Shawn Torlif Daily

AKA: _____
 Race: W Sex: M Age: 38
 DOB: 9722 SS#: _____
 Address: _____
 City, State, Zip: _____
 DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-15-0140

of the S.C. Code of Laws, bearing CDR Code # 2468

☐ NON-VIOLENT ☐ VIOLENT ☒ ~~SERIOUS~~ ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY: Alicia C. Gibson
GIBSON, ALICIA C

77705
SC Bar#

M. J. A.
Defendant

SC Bar#
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of 10 days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2010 GS 42-1742

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-652 (Carrying a Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

§ 47.12 (Public Def/Prob) \$500 \$ 500.00

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

§ 90.7 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$18.90

TOTAL \$ 1048.90

Clerk of Court/ Deputy Clerk

Court Reporter: T. Green

SCCA/217 (11/2009)

INDICTMENT/CASE#: 2009GS4200261

A/W#: M184282

Date of Offense: 9/1/1999 - 9/1/2000

S.C. Code § : 16-15-0140

CDR Code #: 2468

SENTENCE SHEET

A CBI FILED COPY

CLERK OF COURT
SPARTANBURG COUNTY

3/15/22
D.C.

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☒

Random Drug/Alcohol testing ☒

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: sexual abuse condition; GPS Monitor
I have accepted this plea to the level of it and
refer sentence to the judge who hears
the CSC plea.

☐ Appointed PD or appointed other counsel

§ 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2096

Sentence Date: March 18, 2010

FENGAD 800-431-4686

STATE'S EXHIBIT 1

Daily

3-15-22 AP

WITNESSES

Spartanburg County Sheriff's Office

T.K. Tuckman

1. SENTENCE MADE ☒

2. REPORT ENDED ☒

3. CARD PULLED ☒

4. INDEXED ☒

ARREST WARRANT NUMBER

5. CHECKED WARRANTS ☒

M184282

6. CHECKED SIGNATURE ☒

7. ASSESSMENT ☒

FINE CARD MADE ☒

8. TRAFFIC VIOLATION COPY ☒

ACTION OF GRAND JURY

True Bill

S. Gundry

Foreperson of Grand Jury

Date: 1-09-09

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

09-GS-42-0261

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JAN 19 2009

TERM

THE STATE
vs.

Shawn T. Daily

Indictment for

SEX/LEWD ACT, COMMIT/ATTEMPT
UPON CHILD <16

SC Code: 16-15-0140

CDR Code: 2468

Class FEL-D

A CERTIFIED COPY

Angela Cox

CLERK OF COURT

SPARTANBURG COUNTY

BY: *[Signature]* D.C.

DATED

522

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2009 JAN 16 AM 11:22

MARC KITCHENS

App'x 526

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JAN 6 9 2009, the
Grand Jurors of Spartanburg County present upon their oath:

SEX/LEWD ACT, COMMIT/ATTEMPT UPON CHILD <16

That Shawn T. Daily, did in Spartanburg County, between the dates of September 1, 1999 through September 1, 2000, he being over the age of fourteen (14) years, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of one **Minor 2**, a minor under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child, of in violation of §16-15-0140, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

524

STATE OF SOUTH CAROLINA

Computer THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS.
Shawn Torlif Daily
AKA:
Race: W Sex: M Age: 38
DOB: 1972 SS#:
Address:
City, State, Zip:
DL#: SID#:

INDICTMENT/CASE#: 2009GS4202645
A/W#: MI10281
Date of Offense: 9/20/2002 - 9/20/2006
S.C. Code § : 16-15-0140
CDR Code #: 2468

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996) 0-15 years 3/ or discretionary fine

in violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468
☐ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Alicia C. Gibson 79905 SC Bar# Defendant Attorney for Defendant 328 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of 10 days/months/year and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-13

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-6 (Cr. Infra
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

§ 47.12 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00

§ 14-1-213 (Drug Court Surcharge) \$100 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

§ 90.7 (SCCJA Surcharge) \$5 \$5.00

3% to County (if paid in installments) \$3.90

TOTAL \$133.90

PTUP days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. ☐

May serve W/E beginning

Substance Abuse Counseling ☒

Random Drug/Alcohol testing ☒

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: sexual abuse conviction; GPS monitor
I have accepted the plea to lewd act
and defer sentencing to the judge who
hears to CSC plea. 2/10/2010

☐ Appointed PD or appointed other cou
§ 47.12 requires \$5 00 be paid to Cle
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (11/2009)

Presiding Judge

Judge Code: 2096

Sentence Date: March 18, 2010

STATE'S
EXHIBIT 2

Daily

3-15-22 AP

WITNESSES

Spartanburg Co. Sheriff's Office

1. SENTENCE MADE ☒

2. REPORT ENTERED ☒

3. CARD PULLED ☒

4. INDEXED ☒

5. CHECKED WARRANTS ☒

ARREST WARRANT NUMBER

M110281

7. ASSESSMENT AND FINE CARD ☒

8. TRAFFIC VIOLATION COPY ☒

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 5-7-09

VERDICT

DOCKET NO.

09-GS-42-2645

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAY 11 2009

TERM

THE STATE
vs.

Shawn Torlif Daily

Indictment for

SEX/LEWD ACT, COMMIT/ATTEMPT
UPON CHILD <16

SC Code: 16-15-0140

CDR Code: 2468

Class FEL-D

A CERTIFIED COPY
APR 10 2009
CLERK OF COURT
SPARTANBURG COUNTY
BY: [Signature] D.C.
DATED 11/18/2009

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2009 MAY 13 PM 4:42
MARC KITCHENS

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 07 2009, the
Grand Jurors of Spartanburg County present upon their oath:

SEX/LEWD ACT, COMMIT/ATTEMPT UPON CHILD <16

That Shawn Torlif Daily, did in Spartanburg County, between the dates of September 20, 2002 through September 20, 2006, he being over the age of fourteen (14) years, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of one Minor 3 , a minor under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child, of in violation of §16-15-0140, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

App'x 531

WITNESSES

Spartanburg Co. Sheriff's Office

1. SENTENCE MADE

2. REPORT END

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND

FINE CARD MADE

ARREST WARRANT NUMBER

8. TRAFFIC VIOLATION COPY

Direct Indictment

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

10-GS-42-1742

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

FEB 26 2010

TERM

THE STATE

vs.

Shawn Torlif Daily

Indictment for

SEX/LEWD ACT, COMMIT/ATTEMPT
UPON CHILD <16

SC Code: 16-15-0140

CDR Code: 2468

Class FEL-D

A CERTIFIED COPY

Amos Cox
CLERK OF COURT
SPARTANBURG COUNTY
BY: [Signature]
DATED: 11/11/2021

528

App'x 532

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on FEB 22 2010, the
Grand Jurors of Spartanburg County present upon their oath:

SEX/LEWD ACT, COMMIT/ATTEMPT UPON CHILD <16

That Shawn Torlif Daily, did in Spartanburg County, between the dates of July 1, 2006 and April 30, 2008, he being over the age of fourteen (14) years, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of one **Minor 1** a minor under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child, of in violation of §16-15-0140, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

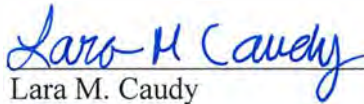


ASSISTANT SOLICITOR

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,



Lara M. Caudy
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 29th day of March, 2023.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

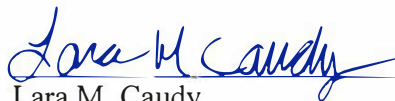
IN THE MATTER OF THE CARE AND
TREATMENT OF SHAWN TORLIF DAILY,

APPELLANT.

APPELLATE CASE NO. 2022-000371

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies that 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 29th day of March, 2023.



Lara M. Caudy
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF SHAWN TORLIF DAILY,

APPELLANT

APPELLATE CASE NO. 2022-000371

RECORD ON APPEAL

LARA M. CAUDY
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201
(803)734-3797

ATTORNEYS FOR RESPONDENT

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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,

Lara M. Caudy
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 16th day of March, 2023.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF SHAWN TORLIF DAILY,

APPELLANT.

APPELLATE CASE NO. 2022-000371

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies that 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 16th day of March, 2023.

Lara M. Caudy
Appellate Defender

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

ATTORNEY FOR APPELLANT

2019 SEP 10 AM 10:30
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

FILED

Form Approved by
S.C. Attorney General
April 27, 2005
SCGA 57a

532
ARREST WARRANT
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Greenville
Municipality of 4-21-09
THE STATE 09-25833
against

Shawn T Daily
Address: GLENWOOD HILLS
Spartanburg, SC 29307-
Phone: SSN: 012
Sex: M Race: W Height: 6 4 Weight: 150
DL State: SC DL #:
DOB: 1972 Agency ORI #: SC0230000
Prosecuting Agency: Greenville County Sheriff's Office
Prosecuting Officer: James Austin - 0011
Offense: Sex / Lewd Act, committing or attempting lewd act
upon child under 16 (June 4, 1996)
Offense Code: 2468
Code/Ordinance Sec: 16-15-0140

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge
Date:

RETURN
A copy of this arrest warrant was delivered to
defendant Shawn T Daily
on 4/2/09

RETURN WARRANT TO:
City Magistrate 2
4 Mc Gee Street Room 116-B
Greenville, SC 29601

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

AFFIDAVIT

Personally appeared before me the affiant James Austin,
being duly sworn deposes and says that defendant Shawn T Daily
did within this county and state on or about 02/14/1992 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)
in the following particulars:

DESCRIPTION OF OFFENSE Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

The affiant has a statement from a twenty year old female victim implicating the defendant in the above listed offense. The victim
states that during the year of 1992 or 1993 when she was four or five years of age, the defendant came to their house for a visit.
While there, the defendant took the victim into the bathroom and pulled down his pants and had the victim touch his penis. The
defendant during this time did fondle the victim's vaginal area. This incident did occur in the County of Greenville. See case #
09-26933

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 Mcgee Street
Greenville, SC 29601-
Affiant's Telephone (864)467-5135

COMPUTER ENTERED
APR 01 2009

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing that above affidavit that there are reasonable grounds to believe
on or about 2/14/1992 defendant Shawn T Daily
did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 03/12/2009

Signature of Issuing Judge
James E. Hudson
Judge Code: 5031

Judge's Address 4 Mcgee Street, Room 116-B
Greenville, SC 29601-
Judge's Telephone (864)467-5302

Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Greenville

VS.

Shawn T Daily

AKA:

Race: W Sex: M Age: 38

DOB: 1972 SS#: 6012

Address: 1 Glenwood Hills Drive

City, State, Zip: Spartanburg, SC 29307

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: ABHAN

INDICTMENT/CASE#: 2010- 2707A

A/W#: 1477737

Date of Offense: 2/14/1992

S.C. Code §: 16-15-140

CDR Code #: 2468

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

NO CONTEST

In violation of § CL of the S.C. Code of Laws, bearing CDR Code # 0013

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted. ☐ Lesser Included Offense. ☒ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Paul B. Winkler SC Bar# Defendant Rick Vietn SC Bar# Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*: the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: W/ 2008-65-42-0261 + ALL OTHER☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. SINCE MARCH 19, 2008☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient: *Fine: \$ § 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ § 47.12 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25§ 14-1-213 (Drug Court Surcharge) \$100 \$ § 50-21-114(B)(1) (Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/cn \$ § 90.7 (SCCJA Surcharge) \$5 \$ 53% to County (if paid in installments) \$ TOTAL: Clerk of Court/ Deputy Clerk Paul B. WinklerCourt Reporter: Digirolamo

SCCA/217 (11/2009)

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/F beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

 Presiding Judge Judge Code: 2158Sentence Date: 4-6-2010

502

OF

GREENVILLE COUNTY SHERIFF'S OFFICE INCIDENT REPORT

CASE NUMBER

ADULT/
JUVENILEAGENCY I.D.
SC0230800OFFENSE
11DSLED
SUB-CODE

RTA

09000026933

EVENT	INCIDENT TYPE		OFFENSE COMPLETED		FORCED ENTRY		PREMISE TYPE		UNITS ENTERED		TYPE VICTIM	
	1. SEXUAL ASSAULT INVESTIGATION		YES ☒ NO ☐		YES ☐ NO ☒		Residence/Home				☐ INDIVIDUAL ☐ BUSINESS ☐ FINANCIAL INST. ☐ GOVERNMENT ☐ RELIG. ORG. ☐ SOC/PUBLIC ☐ OTHER ☐ UNKNOWN ☐ POLICE OFF.	
	2. INCIDENT LOCATION (SUBDIVISION, HILL VILLAGE, APARTMENT AND NUMBER, STREET NAME AND NUMBER)		YES ☐ NO ☐		YES ☐ NO ☐							
	STATE PARK RD.											
VICTIM	INCIDENT DATE		TIME		TO		DATE		TIME		WEAPON TYPE	
	1992		0000								Personal Weapons	
	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RESIDENT		RACE		SEX		AGE		TIME ARRIVED	
	PARIS, DEIDRA		J		W		F		46		2/14/09 1908	
SUBJECT	ADDRESS		CITY		STATE		ZIP CODE		DAYTIME PHONE		EVENING PHONE	
	AVON DR.		TAYLORS		SC		29687				SAME	
	VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT		RACE		SEX		AGE	
	Minor 4		A/Q V/A/Quasi		J		W		F		20	
NARRATIVE	ADDRESS		CITY		STATE		ZIP CODE		DAYTIME PHONE		EVENING PHONE	
	BATESVILLE RD.		GREER		SC		29650				SAME	
	VICTIM (NO. 1) USING ALCOHOL		YES ☐ NO ☐ UNK ☐		DRUGS		YES ☐ NO ☐ UNK ☐		TYPE			
	TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/PLASMT. ☐ OTHER ☐		ALONE ☐ ASSISTED ☐		J. THIS JURISDICTION ☐ STATE ☐ OUT OF STATE ☐ UNKNOWN ☐							
VEHICLE	NAME (LAST, FIRST, MIDDLE)		RACE		SEX		AGE		DATE OF BIRTH		HEIGHT	
	DAILY, SHAWN TORLIF		W		M		36		72		603	
	ADDRESS		CITY		STATE		ZIP CODE		PATROL DISTRICT		HAIR	
	GLENNWOOD HILLS DR.		SPARTANBURG		SC		29307		OJ19		BLN/Blu	
PROPERTY	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL, PECULIARITIES, ETC.		DATE/TIME OF OFFENSE		DATE OF ARREST		SUBJECT (NO. 1) USING ALCOHOL		YES ☐ NO ☐ UNK ☐		ARRESTED NEAR OFFENSE SCENE	
			1992		N/A		YES ☐ NO ☐ UNK ☐		YES ☐ NO ☐ UNK ☐		Total Arrested: 0	
	ARRESTED ARMED ☐ YES ☐ NO ☐ WEAPON TYPE:		ARRESTED ON CURRENT OFFENSE ☐ CLEARED BY ARREST ON PRIOR OFFENSE ☐		JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY ☐		ON VIEW ARREST ☐ SUMMONED ☐ CUSTODY ☐					
	CHARGES		WARRANT #		TICKET #							
ADMIN	Arrest Location: N/A		Gang Activity: NG - Not Gang Related		I RESPONDED TO THE VICTIM'S MOTHER'S RESIDENCE IN REFERENCE TO A SEXUAL ASSAULT THAT OCCURRED APPROX. 14-15 YEARS AGO AT THE INCIDENT LOCATION.		JURISDICTION OF THEFT: N/A		JURISDICTION OF RECOVERY: N/A		V.T.N.	
	TAG NUMBER		STATE		YEAR		N/A		MAKE		MODEL	
	YEAR		MAKE		MODEL		STYLE		COLOR		ADDITIONAL VEHICLE DESCRIPTION	
	TAG ONLY											
ADMIN	Status		Property Type		Quantity		Property Make		Color		Description	
	NONE											
	SUBJECT IDENTIFIED		SUBJECT LOCATED		ACTIVE ☐ ADMIN. CLOSED ☐		ARRESTED UNDER 18 ☐ EX-CLEARED UNDER 18 ☐		UNFOUNDED ☐ ARRESTED 18 AND OVER ☐ EX-CLEARED 18 AND OVER ☐			
	REASON FOR EXCEPTIONAL CLEARANCE: 1. OFFENDER DEATH 2. NO PROSECUTION 3. VICTIM DECLINES COOPERATION 4. EXTRADITION DENIED 5. JUVENILE NO ARREST											
ADMIN	REPORTING OFFICER (S)		DATE		Unit # / Star #		APPROVING OFFICER		DATE		Unit # / Star #	
	GRIFFIN, B.		2/14/09		B22		[Signature]		2/15/09		[Signature]	
	*983						EXPLAIN INVESTIGATION		YES ☐ NO ☐ OFFICER			

App'x 544

OF AGENCY I.D.
SCO230000GREENVILLE COUNTY SHERIFF'S OFFICE
SUPPLEMENTAL REPORT

CASE NUMBER

09000026933

☐ ORIGINAL REPORT	☐ STATUS CHANGE	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	INCIDENT TYPE SEXUAL ASSAULT INVESTIGATION
☒ SUPPLEMENTAL REPORT	☐ OTHER REPORT	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	PATROL DISTRICT 02B PAGE 1 OF 1 PAGES

I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	
	☐ VICTIM #	SEE ORIGINAL		#1	#2	#3						
	☐ SUBJECT #	ADDRESS		CITY	STATE	ZIP CODE	PATROL DISTRICT	DAY PHONE		EVENING PHONE		
	☐ RUNAWAY	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
	☐ WANTED											
☐ WARRANT												
☐ ARREST	☐ VICTIM NO.	VISIBLE INJURY:		COMPLAINT OF NON-VISIBLE INJURIES		VICTIM USING ALCOHOL:		☐ NO ☐ YES ☐ UNK.		☐ TWO-MAN VEHICLE ☐ DETECTIVE ☐ ALONE		
☐ MISSING	EXPLAIN:		☐ YES ☐ NO	☐ NO ☐ YES	DRUGS: ☐ NO ☐ YES TYPE		☐ UNK.		☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED			
☐ JAIL	SUBJECT NO.	USING ALCOHOL		☐ NO ☐ YES ☐ UNK		ARRESTED ON CURRENT OFFENSE						
☐ Other	USING DRUGS		☐ NO ☐ YES ☐ UNK		TYPE:		☐ UNK		Cleared by arrest on prior offense			
ARRESTEE ARMED ☐ YES ☐ NO WEAPON TYPE:												
JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY												
Arrest Location: SEE ORIGINAL												

NARRATIVE

I RESPONDED TO THE COMP.'S (VICTIM'S MOTHER) RESIDENCE IN REFERENCE TO A SEXUAL ASSAULT THAT OCCURRED APPROX. 14-15 YEARS AGO AT THE INCIDENT LOCATION. THE COMP. AND HER HUSBAND (DOUG PARIS, AVON DR.) WERE TALKING ABOUT RECENT NEWS WITH THE VICTIM (THE COMP.'S DAUGHTER). THE COMP. AND HER HUSBAND TALKED ABOUT THE SUBJECT'S (SHAWN DAILY) SEXUAL ASSAULT CASES THAT ARE PENDING. THE COMP. THEN BROUGHT UP THAT SHE USED TO WORK WITH THE SUBJECT (SHAWN) AT MED-SHORE AMBULANCE SERVICE A LONG TIME AGO. THIS NEWS BROUGHT THE VICTIM TO TEARS AS SHE REMEMBERED THAT 14 OR 15 YEARS AGO SHE WAS IN THE BATHROOM AT THE INCIDENT LOCATION AND THE SUBJECT TOUCHED HER ON THE VAGINA AND THEN PUT HER HAND ON HIS EXPOSED PENIS. THE VICTIM STATED THE INCIDENT POSSIBLY LASTED FOR 10 TO 15 MINUTES.

THE VICTIM TOLD ME SHE HAD BEEN SCARED TO REPORT THE INCIDENT BECAUSE SHE SAID IT FELT LIKE A "BAD DREAM" AND THAT MAYBE IT DID NOT HAPPEN, BUT NOW THE VICTIM WAS SURE IT HAD HAPPENED.

THE VICTIM WAS ADVISED SEXUAL ASSAULT INVESTIGATORS WOULD BE IN TOUCH WITH HER AND SHE WAS GIVEN A VICTIM/WITNESS FORM.

B04 (SGT. ALLIGOOD) WAS NOTIFIED.

VEHICLE	☐ STOLEN	TAG NUMBER	STATE	YEAR	V.I.N.	SEE ORIGINAL	
	☐ RECOVERED	YEAR	MAKE	MODEL	STYLE	COLOR	
	☐ SUSPECT	ADDITIONAL VEHICLE DESCRIPTION					
	☐ VICTIM	TAG ONLY					

PROPERTY	Status	Property Type	Quantity	Property Make	Color	Description	Serial #	Value		
						SEE ORIGINAL				
ADMIN	SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADMIN. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEARED UNDER 18 ☐ EX-CLEARED 18 AND OVER	
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ VICTIM/DECLINES COOPERATION 4. ☐ EXTRADITION DENIED 5. ☐ JUVENILE-NO ARREST									
	REPORTING OFFICER(S)		DATE	Unit # / Size	APPROVING OFFICER		DATE	Unit # / Size		
	GRIFFIN, B.		*983	2/14/09	B22	FOLLOW-UP INVESTIGATION ☐ YES ☐ NO (OFFICER) <i>CTD</i>		2-15-09 <i>JP</i>		

^OF . . AGENCY I.D.
SCO230000

**GREENVILLE COUNTY SHERIFF'S OFFICE
SUPPLEMENTAL REPORT**

CASE NUMBER

0	9	0	0	0	0	2	6	9	3	3
---	---	---	---	---	---	---	---	---	---	---

☐ ORIGINAL REPORT ☐ STATUS CHANGE ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY INCIDENT TYPE CSC Investigation

☒ SUPPLEMENTAL REPORT ☐ OTHER REPORT ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY PATROL DISTRICT 02 PAGE 1 OF 1 PAGES

I.D. OVERFLOW	☐ COMPLAINT ☐ VICTIM # ☐ SUSPECT # ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ MISSING ☐ JAIL ☐ Other		NAME (LAST, FIRST, MIDDLE) Paris, Deidra										VICTIM RELATIONSHIP TO SUBJECT #1 #2 #3			RESIDENT PAGE W OF F		AGE 46		D.O.B. 46				
	ADDRESS Avon Drive					CITY Taylors					STATE SC		ZIP CODE 29687		PARCEL OR DISTRICT 02		DAY PHONE H W		EVENING PHONE H W					
	HEIGHT WEIGHT HAIR EYES FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.										VISIBLE INJURY: ☐ YES ☐ NO COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK. BROKEN: ☐ NO ☐ YES TYPE ☐ UNK.										☐ TWO-MAN VEHICLE ☐ DETECTIVE ☐ ALONE ☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED			
	SUBJECT NO. 1 USING ALCOHOL ☐ NO ☐ YES ☐ UNK USING DRUGS ☐ NO ☐ YES TYPE: ☐ UNK										☐ ARRESTED ON CURRENT OFFENSE ☐ CLEARED BY ARREST ON PRIOR OFFENSE													
ARRESTEE ARMED ☐ YES ☐ NO WEAPON TYPE:										☐ ON VIEW ARREST: ☐ SUMMONED ☐ CUSTODY														
JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY																								
Arrest Location:																								
Suspect: Daily, Shawn Torlif, W/M, 36 yoa, DOB: 1972.																								
On Monday February 16, 2009, Minor 4 came to LEC and met with this inv. to give a statement on the alleged sexual assault committed on her by the listed suspect.																								
Ms. J gave this account of what she remembered taking place. The alleged suspect was a co worker of the victim's mother at Med Shore Ambulance Service at the time of this incident. The suspect was visiting the victim's mother. The incident from all accounts happened sometime around 1992 and 1993. The victim was about four years old. The victim couldn't remember where her mother was at the time. The suspect took her in the bathroom. She remembers the suspect taking his pants down and sitting on the toilet. She didn't remember how her panties got down but they were down and the suspect was rubbing on her vagina. She remembers the suspect making her touch his penis. She stated she didn't think the suspect penetrated her. The victim's memory was vague on some of the incident. She gave her best account of what took place. She did remember this being a one time incident.																								
The victim states she went to her mother's house for Valentines Day, February 14, 2009. While there they were watching the news about a little girl getting kidnapped. Her mother mentioned the name of the suspect and asked her did she remember him. She states that she went into a little shock. She told her mother that she did remember the suspect and that she didn't want to talk about him. Her mother told her she had to talk about it. She stated that she disclosed to her mother what she remembered happening to her. Her mother told her that the suspect is presently charged on some sexual assaults. She called the police and made a report.																								
The victim was advised that this case would be investigated because there's no statute of limitation on sexual assaults. She should be prepared that the suspect would probably deny the allegation. Inv. to continue.																								
VEHICLE	☐ CYCLIN ☐ RECOVERED ☐ SUSPECT ☐ VICTIM		TAG NUMBER		STATE		YEAR		V.I.N.		VALUE													
			YEAR		MAKE		MODEL		STYLE		COLOR													
			TAG ONLY ☐		ADDITIONAL VEHICLE DESCRIPTION																			
PROPERTY	Status		Property Type		Quantity		Property Make		Color		Description				Serial #		Value							
ADMIN	SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADMIN. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEARED UNDER 18 ☐ EX-CLEARED 18 AND OVER															
	☐ YES ☐ NO		☐ YES ☐ NO																					
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENSES BEYOND 2. ☐ NO PROSECUTION 3. ☐ VICTIM/DECLINES COOPERATION 4. ☐ EXTRADITION DENIED 5. ☐ JUVENILE-NO ARREST																							
	REPORTING OFFICER(S)		DATE		Unit # / Dist #		APPROVING OFFICER		DATE		Unit # / Dist #													
Austin, Jim *0011		02-16-09		625		McNamara, M. Sgt. *242		02-16-09		603														
						FOLLOW-UP INVESTIGATION		☐ YES ☐ NO																

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

VICTIM 5: UNIDENTIFIED
VICTIM(S)

FILED

2019 SEP 10 AM 10:31

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

APR. 25. 2008 9:20AM
DEPARTMENT
800420100

SPRING PUBLIC SAFETY
INCIDENT REPORT

INFORMATION
ONLY

CASE NO. 862
04009506

NCIC
INC. No. ENT. No.

INCIDENT TYPE				COMPLETED	FORCED ENTRY	PREMISE TYPE	UNIT ENTERED	TYPE VICTIM
INFORMATION ONLY 904 INFORMATION ONLY; ALL OTHER NONREPORTABLE REPORTS				YES NO	YES NO	OTHER/UNKNOWN		Individual Business Financial Inst. Government Relig. Orgn. Soc./Public Other Unknown Police Off.
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE		WEAPON TYPE		
PINE ST, SPARTANBURG, SC				29301-				
INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK	TIME ARRIVED	DEPART TIME	LOCATION NO.
04/01/2008	13:30		04/01/2008	14:00	04/01/2008	14:18	14:22	3
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
RHODES, MARIE					S	W	F	18 / 22
ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	
1 WPEACHTREE ST				WOODRUFF	SC	29388-		
VICTIM'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
UNKNOWN					U	W	F	8 / 10
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.				
ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	
SEXUAL ABUSE (MCT) YES NO EXPLAIN-				COMPLAINT OF ANY NON-RESIDENTS YES NO				
VICTIM(S) USING ALCOHOL YES NO UNK				DRUGS YES NO UNK TYPE				
NAME (LAST, FIRST, MIDDLE)				RACE	SEX	AGE	ETH	DATE OF BIRTH
DAILY, SHAWN				W	M	34 /	N	02/15/1972
FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.				DAYTIME PHONE		EVENING PHONE		
				884-578-9222		884-596-2800		
ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	
GLENWOOD HILLS DR				SPARTANBURG	SC	29307-		
SUBJECT(S) USING ALCOHOL YES NO UNK				ARRESTED NEAR OFFENSE SCENE YES NO		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST
DRUGS YES NO UNK TYPE				TOTAL # ARRESTED		04/01/2008 1:30:00 PM		04/01/2008 1:30:00 PM
DAY OF THE WEEK				HOW REPORTED		A= OFFICER DISPATCHED ON CALL		D= COMPLAINT WRITTEN IN
S M T W T F S UNK						B= REPORT TAKEN BY PHONE		E= OFFICER INITIATED
						C= COMPLAINANT WALKED IN		F= OTHER
ORIGINAL - COE J P								

ON 04-01-2008 I WAS DISPATCHED TO THE YMCA IN REFERENCE TO A SEXUAL ASSAULT. UPON ARRIVAL I SPOKE TO MARIE RHODES AN EMPLOYEE OF THE YMCA.

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY			
TYPE (GROUP)							TOTAL VALUE
STOLEN							0
DAMAGED							0
BURNED							0
RECOVERED							0
SEIZED							0
SUBJECT IDENTIFIED YES NO		SUBJECT LOCATED YES NO		S. F.		ACTIVE ADM. CLOSED	
						ARRESTED UNDER 18	
						EX-CLEAR UNDER 18	
REASON FOR EXCEPTIONAL CLEARANCE 1. OFFENDER DEATH 2. NO PROSECUTION 3. EXTRADITION DENIED 4. VICTIM REFUSES COOPERATION 5. JUVENILE NO DISTRICT							
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER
COE, J P		04/01/2008 2:15:00	0048				
				FOLLOWUP INVESTIGATION YES NO			

AGENCY: SPARTANBURG PUBLIC
ORI #:

INCIDENT REPORT

04/25/08 09:25 Pg: 1

ax from : 864 596 2152

OCA Number: 04009506

Entered By: SUSAN PERSONS, On 04/04/2008 10:50:18 PM
Jurisdiction: SC0420100
Case Number: 04009506
Supplement: No
Source Table: RMS_Case

Title: SUPPLEMENTAL - COE, JP

ON 04-01-2008 I RESPONDED TO THE YMCA IN REFERENCE TO A SEXUAL ASSAULT. UPON ARRIVAL I SPOKE WITH MARIE RHODES AN EMPLOYEE OF THE YMCA. MS RHODES STATED THAT A WHITE MALE SHE BELIEVES TO BE SHAWN DAILY BROUGHT A YOUNG GIRL BETWEEN THE AGES OF 8 AND 10 INTO THE POOL AREA. WHEN THE YOUNG GIRL GOT OUT OF THE POOL SHE WAS HOLDING HERSELF AND SCREAMING. THE WHITE MALE TOOK THE GIRL INTO THE MENS LOCKER ROOM WHERE ANOTHER LIFEGUARD AND YMCA CO-WORKER FOUND HIM CORNERING THE CHILD AND YELLING AT HER. THE EMPLOYEES OF THE YMCA ASKED HIM TO LEAVE THE LOCKER ROOM. THE WHITE MALE THEN TOOK THE GIRL AND LEFT THE PREMISES. THE YMCA WAITED 20 MINUTES AFTER THE MALE AND YOUNG GIRL HAD LEFT THE PREMISES TO CALL THE POLICE. MS RHODES THEN GAVE US COPIES OF FOUR PREVIOUS YMCA INTERNAL REPORT OF MEMBER/PARTICIPANT ACCIDENT FORMS DATING BACK TO 08-15-2005. WE HAVE ONE REPORT THAT IS DATED 08-15-2005, ANOTHER DATED 10-27-2005, AND ANOTHER ONE THAT IS UNDATED THAT THE EMPLOYEES OF THE YMCA ALLEGE HAPPENED DURING THE MONTH OF MARCH 2008. NONE OF THE THREE PREVIOUS INCIDENTS HAD BEEN REPORTED TO THE POLICE BY THE YMCA. FOR THE INCIDENT ON 08-15-2005 THE EMPLOYEE OF THE YMCA STATED THAT WHEN SHE GOT TO WORK AT 1625 HRS THE MALE HAD A GIRL BETWEEN THE AGES OF 8 AND 10 WITH HIM IN THE DEEP END OF THE POOL. HE HELD HER FRONT TO FRONT WITH HER BACK TO THE WALL AND HER LEGS AROUND HIS WAIST FOR 10 MINUTES. HE THEN TOOK THE GIRL TO THE BIG POOL BUT DID NOT GET IN HIMSELF. HE HELPED HER PULL UP HER SUIT BOTTOM IN THE FRONT UP TO HER BELLY BUTTON. HE TOOK FOUR TO FIVE SECONDS ADJUSTING IT. THEY WENT BACK TO THE SMALL POOL. WHEN THE GIRL GOT OUT OF THE POOL HE TOOK HER TO THE METAL BLEACHERS TO DRY OFF. HE SAT DOWN AND SHE STOOD BETWEEN HIS KNEES WHILE HE DRIED HER WHOLE BODY WITH TWO TOWELS. HE SPENT THIRTY SECONDS OR MORE DRYING HER BOTTOM WITH HIS HANDS USING THE TOWEL. HE THEN DRIED EACH LEG AND THEN PUT THE TOWEL BETWEEN HER LEGS. HE LIFTED THE TOWEL IN THE FRONT AND BACK USING A SAWING MOTION TRYING TO DRY HER. HE THEN DRIED HER BOTTOM ONCE MORE, WRAPPED HER UP IN TWO TOWELS AND WENT OUT THE DOOR. KELLI SEAWELL AND STEPHANIE HALL (YMCA EMPLOYEES) SAW HIM TWENTY MINUTES LATER COMING OUT OF THE HALL WHERE THE FAMILY DRESSING ROOMS ARE AND THEY THEN LEFT THE YMCA. FOR THE NEXT INCIDENT DATED 10-27-2005 THE EMPLOYEES OF THE YMCA STATED THAT A MAN BROUGHT IN A YOUNGER GIRL TO THE POOL. WHILE SWIMMING THE MAN TOUCHED THE GIRL SEVERAL TIMES ON THE BUTT AND SQUEEZED HER BUTT MANY TIMES WHILE PLAYING WITH HER. LATER AS THEY WERE ABOUT TO GET OUT OF THE POOL THE MAN PUT THE GIRL ON HIM WHERE SHE WAS STRADDLING HIM FOR ABOUT TEN MINUTES AS THEY WALKED AROUND THE POOL. THEY FINALLY GOT OUT. FOR THE NEXT UNDATED INCIDENT THE YMCA EMPLOYEES STATED THAT HE WAS PLAYING WITH HER AND TOUCHING HER BOTTOM AND RUBBING HER BODY. THIS OCCURRED SEVERAL TIMES OFTEN ENDING UP IN THE CORNER STRADDLING ONE ANOTHER. WHEN GETTING OUT HE DRIED HER OFF RUBBING THE TOWEL UP AND DOWN HER LEG A LONG PERIOD OF TIME. THEN THEY WENT INTO THE FAMILY CHANGING ROOM TOGETHER AND WERE IN THERE FOR TEN MINUTES. EMPLOYEES OF THE YMCA WERE UNABLE TO TELL US IF THIS WAS THE SAME GIRL FOR ALL OF THESE INCIDENTS OR DIFFERENT GIRLS. THE EMPLOYEES OF THE YMCA BELIEVE THAT SHAWN DAILY IS THE MALE INVOLVED IN THE INCIDENTS BUT ARE NOT CERTAIN. WE HAVE NO FURTHER INFORMATION ON THE IDENTITY OF THE GIRL. THE YMCA INTERNAL REPORT OF MEMBER/PARTICIPANT ACCIDENT FORMS WERE PLACED INTO EVIDENCE. THE YMCA EMPLOYEES WERE ADVISED TO NOTIFY POLICE AS SOON AS THE

FILED

2019 SEP 10 AM 10:31

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

OCA Number: 04009508

Entered By: H D FORRESTER, On 04/05/2006 11:13:58 AM

Edited By: H D FORRESTER, On 04/13/2006 9:13:10 AM

Jurisdiction: SC0420100

Case Number: 04009508

Supplement: No

Source Table: RMS_Case

Title: INV FORRESTER SUPPLEMENTAL

FILED
2019 SEP 10 AM 10:31
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

ON 04-04-06 I WAS ASSIGNED THIS CASE.

0900HRS--I CALLED MR SHAWN DAILY AND ADVISED HIM THAT I NEEDED TO SPEAK TO HIM IN REFERENCE TO THIS INCIDENT. HE STATED THAT HE ALREADY KNEW WHY I WAS CALLING BECAUSE TWO LIFEGUARDS HAD APPROACHED HIM ON SATURDAY AT THE YMCA. HE STATED THAT HE WANTED TO CONSULT AN ATTORNEY BEFORE HE CAME FOR AN INTERVIEW. HE STATED THAT HE WOULD CALL ME BACK AFTER HAVING DONE SO.

1000HRS--I SPOKE WITH MARIE RHODES, ONE OF THE LIFEGUARDS THAT FILED A COMPLAINT ON MR DAILY. SHE STATED THAT SHE COULD NOT COME TODAY TO GIVE A STATEMENT BUT WOULD COME TOMORROW 4-8-06 AROUND 1330HRS WHEN SHE LEFT THE YMCA. I AGREED.

1020HRS--I RETRIEVED THE YMCA INTERNAL REPORTS FROM EVIDENCE DOCUMENTING REPORTS THAT DATED BACK TO 09-05. THESE COPIES WERE PLACED IN THE CASE FILE.

1200HRS--MR DAILY CALLED BACK AND STATED THAT HE WOULD BE AT CITY HALL BETWEEN 1400-1430HRS TO GIVE A STATEMENT.

1428HRS--MR DAILY ARRIVED AT CITY HALL. I READ HIM HIS MIRANDA RIGHTS BEFORE THE STATEMENT WAS TAKEN. MR DAILY AGREED TO QUESTIONING WITHOUT A LAWYER AND SIGNED A PRE-INTERROGATION WAIVER FORM. THE FORM WAS PLACED INTO EVIDENCE AT CITY HALL. MR DAILY STATED THAT FEMALE CHILD HE WAS WITH IS ^{Minor 3} HE STATED THAT ^{Minor 3} IS HIS BEST FRIENDS CHILD. THE MOTHERS NAME IS CLAIRE B. HE STATED THAT HE HAS KNOWN ^{Minor 3} SINCE SHE WAS BORN AND HAS BABY SAT FOR ^{Minor 3} MANY TIMES, BUT HAS ONLY TAKEN HER TO THE YMCA A COUPLE OF TIMES. HE STATED THAT WHILE THEY WERE IN THE POOL ^{Minor 3} HAD KNOCKED OFF A SCAB THAT WAS ON HER LEG WHILE SWIMMING IN THE POOL AND SHE STARTED CRYING. THEY WERE IN THE DEEP END OF THE POOL AND THAT IS WHY SHE WAS HANGING ON TO HIM BECAUSE SHE DOES NOT KNOW HOW TO SWIM. HE STATED THAT HE GOT HER OUT AND SHE WAS "HOLDING" HER PRIVATE AREA BECAUSE SHE HAD TO GO TO THE BATHROOM. HE STATED THAT HE DRIED HER OFF AND HE WENT INTO THE MALE LOCKER ROOM AND MADE SURE NOONE WAS IN THERE. HE THEN TOOK ^{Minor 3} INTO THE LOCKER ROOM WHERE SHE CHANGED CLOTHES. HE STATED THAT SHE WAS "PITCHING A FIT" AND HE WAS IN A HURRY TO LEAVE THE Y. HE STATED THAT HE THEN WALKED AROUND THE CORNER SO THAT HE COULD CHANGE CLOTHES OUT OF HER SIGHT. HE STATED THATS WHEN HE WAS APPROACHED BY THE TWO LIFEGUARDS. HE STATED THAT THEY LEFT. HE STATED THAT HE DID TELL CLAIRE, MOTHER, ABOUT THE INCIDENT THAT OCCURED. MR DAILY ALSO STATED THAT HE HAS ALSO TAKEN HIS GIRLFRIENDS DAUGHTER, ^{Minor 1} TO THE YMCA. HE STATED THAT THE MOTHER IS JENNIFER H. I ASKED HIM FOR CONTACT INFO AND HE WOULD NOT GIVE IT TO ME. HE STATED THAT SHE WAS OUT OF TOWN BUT STATED THAT SHE LIVED IN THE WESTGATE AREA AROUND FUDDRUCKERS.

1600HRS--I WENT TO PARK PLACE APTS AND SPOKE WITH THE MANAGER. SHE STATED THAT MS H/ WAS A RESIDENC THERE AND GAVE ME HER CONTACT INFORMATION. I WAS UNABLE TO MAKE CONTACT WITH MS H/. THERE WERE ALSO MANY FLYERS ON HER APT DOOR. IT APPEARED THAT SHE HAD NOT BEEN HOME FOR SEVERAL DAYS.

04-05-06 1600HRS--I CALLED KELLI SEAWELL SHE STATED THAT SHE WAS SPEAKING WITH THE OTHER LIFEGUARDS AND THEY WILL BE CONTACTING ME IN REFERENCE TO GIVING ME A STATEMENT. MS SEAWELL STATED THAT SHE WILL BE COMING IN ON FRIDAY AROUND 1330HRS TO GIVE A STATEMENT.

04-07-06 100HRS--I SPOKE WITH THE MOTHER OF ^{Minor 1} JENNIFER H. SHE ADVISED THAT THIS REPORT WAS "STUPID" AND THAT SHE WAS NOT COOPERATING UNTIL SHE SPOKE WITH HER LAWYER JOHN WHITE JR. I GAVE HER MY CONTACT NUMBERS AFTER SHE HAD DONE SO.

04-11-06 0800HRS--INV BRADLEY AND MYSELF WENT TO ^{Minor 3} FLATWOOD LANE OFF OF HWY 221 TO SPEAK WITH ^{Minor 3} PARENTS. NOONE WAS HOME BUT I DID LEAVE MY CARD IN THE DOOR WITH MY CONTACT NUMBERS.

1200HRS--MS H. CALLED ME BACK AND STATED THAT SHE HAS MET WITH HER LAWYER AND WAS ADVISED NOT TO WRITE A STATEMENT OR INVOLVE HER DAUGHTER AT THIS POINT.

ALSO MS SEAWELL CALLED ME AND STATED THAT SHE WAS UNABLE TO MAKE IT FRIDAY BECAUSE HER DAUGHTER WAS SICK. SHE LEFT A MESSAGE ON MY VOICE MAIL STATING THAT SHE WOULD TRY AND COME TODAY.

1220HRS--I CALLED TO SPEAK WITH THE DIRECTOR OF THE YMCA, RICK CALEB. I DID NOT GET AN ANSWER BUT LEFT A VOICE MESSAGE WITH MY CONTACT NUMBERS FOR HIM TO RETURN MY CALL IN REFERENCE TO THIS MATTER. I OBTAINED THE INTERNAL REPORTS FROM THE YMCA THAT HAVE BEEN DATED BACK TO 9-05. MR DAILEYS NAME IS NOT MENTIONED IN THESE REPORTS EXCEPT FOR THE ONE ON 4-1-06. I NEEDED TO KNOW HOW THESE REPORTS ENDED UP IN MR DAILEYS FILE WITH ONLY "THIS MAN" AS AN IDENTIFIER.

04-12-06 0830HRS--CLAIRE B. THE MOTHER OF ^{Minor 3} CALLED ME IN THE OFFICE. I ASKED HER IF SHE WOULD LIKE TO WRITE A STATEMENT ON WHAT SHE BELIEVES TO BE THE FACTS IN THIS CASE. SHE STATED THAT SHE DOES NOT WISH TO WRITE A STATEMENT NOR IS SHE GOING TO INVOLVE HER CHILD WITH THE CAC. SHE ADVISED THAT HER CHILD IS VERY OPEN WITH HER AND WILL NOT EVEN ALLOW DAY CARE WORKERS TO PUT RASH CREAM ON HER "PRIVATE AREA". SHE STATED THAT ^{Minor 3} VOLUNTEERS TO GO WITH SHAWN AND HAS EVEN REQUESTED TO STAY WITH HIM. SHE STATED THAT SHE HAS SPOKEN WITH ^{Minor 3} IN DEPTH ABOUT PEOPLE "TOUCHING" HER AND ^{Minor 3} HAS NEVER EXPRESSED THAT ANYONE HAS EVER "TOUCHED" HER. SHE STATED THAT HER DAUGHTER HAS A VERY LOW PAIN TOLERANCE AND SHE WAS CRYING BECAUSE SHE HAD SCRAPED OFF A SCAB ON HER KNEE AND SHE WAS HOLDING HERSELF IN HER PRIVATE AREA BECAUSE SHE HAD TO GO TO THE BATHROOM. SHE STATED THAT SHE WAS VERY SATISFIED THAT NOTHING IN PROPER HAD TAKEN PLACE.

Fax from : 864 596 2152

04/25/08 09:25 Pg: 4

0800HRS-I MET WITH THE CEO OF THE YMCA, JACK CALLEB. I ASKED HIM HOW THE REPORT THAT DID NOT GIVE A NAME NOR A DESCRIPTION BECAME ASSOCIATED WITH THE SUSPECT. HE STATED THAT HE COULD NOT ANSWER THAT. HE FURTHER STATED THAT HE HAD INTERVIEWED EACH OF THE LIFEGUARDS AND ONLY ONE, ANDREW DOBBINS, HAD EVER ACTUALLY SAW THE SUSPECT TOUCH A CHILD INPROPERLY. I ASKED HIM WHAT ANDREW SAID THE CIRCUMSTANCES WERE DURING THE INCIDENT. HE STATED THAT ANDREW STATED THAT THE SUSEPCT WAS HOLDING THE CHILD IN THE WATER BY HER BOTTOM AND THREW HER UP IN THE AIR. MR CALLEB STATED THAT HE DID NOT FEEL THAT WAS INPROPER. MR CALLEB STATED THAT STEPHANIE ADVISED HIM THAT SHE SAW A "FORIEGN" GUY ADN ANOTHER REPORT STATED THAT THE SUSEPCT WAS A MAN OF AVERAGE HEIGHT. THE SUSPECT IS 6'5.

MR CALLEB STATED THAT IN JOSH ORIGINAL REPORT HE STATED THAT HE SAW THE SUSPECT CORNER THE CHILD IN THE MENS LOCKER ROOM AND WAS SCREAMING AT HER. JOSH RECANTED THAT STATEMENT AND ADVISED THAT HE NEVER OBSERVED THAT SUSPECT YELLING AT THE CHILD. HE STATED THAT ALL THE LIFEGUARDS ONLY FELT LIKE SOMETHING WAS GOING ON BUT NOONE HAD EVER SEEN ANY INPROPER BEHAVIOR.

MR CALLEB DID GIVE ME A PRINT OUT OF THE INTERVIEWS WITH ALL THE LIFEGUARDS AND IT WAS PLACED INTO THE CASE FILE. HE ALSO GAVE ME A PRINTOUT OF THE TIMES THE SUSPECT CHECKED INTO THE YMCA. THE SUSEPCT WAS THERE DURING THE TIMES OF THE INCIDENT REPORTS WITHIN THE YMCA.

04-12-08 1430HRS--SHAWN DAILEY CALLED ME AND STATED THAT HE WAS ADVISED BY HIS LAWYER NOT TO TAKE A POLYGRAPH.

04-13-08 0800HRS-I MET WITH TONY LEIBERT IN THE SOLICITORS OFFICE. I WENT OVER ALL THE EVIDENCE THAT I HAD IN THIS CASE. HE STATED THAT AT THIS TIME PROSECUTION IS DENIED DUE TO LACK OF EVIDENCE.

THIS CASE IS UNFOUNDED.

FILED

2019 SEP 10 AM 10:31

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

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

PETITIONER'S EXHIBIT

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SPARTANBURG COUNTY
AMY W. COX

SP Multi-Disciplinary Team
Daily Shawn - 339909
Page 3

HEALTH INFORMATION AND HISTORY:

Physical Health/Condition: None
Medications:
Other Information:

MENTAL HEALTH INFORMATION AND HISTORY:

Diagnosis:
Medications:
Problems/Compliance: N/A
Treatment History:
Other Information:

SOCIAL HISTORY: N/A

Inmate's History of Sexual Abuse (age at time of abuse, age of perpetrator
Length of abuse, relationship to perpetrator, gender of perpetrator):

Juvenile History: N/A
Other Information:

SEX OFFENDER TREATMENT HISTORY: None in the file

	TYPE	DATES	STATUS
Phase I:			

SOTP

Phase II:

Phase III: Education

OTHER

RTU: Intensive Residential
Treatment

Admission of Sex Offense(s):
Other Information:

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SPARTANBURG COUNTY
AMY W. COX

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FILED

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

PETITIONER'S EXHIBIT

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SPARTANBURG COUNTY
AMY W. COX

Development and Course

Individuals with sexual sadism in forensic samples are almost exclusively male, but a representative sample of the population in Australia reported that 2.2% of men and 1.3% of women said they had been involved in bondage and discipline, "sodomasochism," or dominance and submission in the previous year. Information on the development and course of sexual sadism disorder is extremely limited. One study reported that females became aware of their sadomasochistic orientation as young adults, and another reported that the mean age at onset of sadism in a group of males was 19.4 years. Whereas sexual sadism per se is probably a lifelong characteristic, sexual sadism disorder may fluctuate according to the individual's subjective distress or his or her propensity to harm nonconsenting others. Advancing age is likely to have the same reducing effect on this disorder as it has on other paraphilic or normophilic sexual behavior.

Differential Diagnosis

Many of the conditions that could be differential diagnoses for sexual sadism disorder (e.g., antisocial personality disorder, sexual masochism disorder, hypersexuality, substance use disorders) sometimes occur also as comorbid diagnoses. Therefore, it is necessary to carefully evaluate the evidence for sexual sadism disorder, keeping the possibility of other paraphilias or mental disorders as part of the differential diagnosis. The majority of individuals who are active in community networks that practice sadistic and masochistic behaviors do not express any dissatisfaction with their sexual interests, and their behavior would not meet DSM-5 criteria for sexual sadism disorder. Sadistic interest, but not the disorder, may be considered in the differential diagnosis.

Comorbidity

Known comorbidities with sexual sadism disorder are largely based on individuals (almost all males) convicted for criminal acts involving sadistic acts against nonconsenting victims. Hence, these comorbidities might not apply to all individuals who never engaged in sadistic activity with a nonconsenting victim but who qualify for a diagnosis of sexual sadism disorder based on subjective distress over their sexual interest. Disorders that are commonly comorbid with sexual sadism disorder include other paraphilic disorders.

Pedophilic Disorder

Diagnostic Criteria

302.2 (F65.4)

- A. Over a period of at least 6 months, recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children (generally age 13 years or younger).
- B. The individual has acted on these sexual urges, or the sexual urges or fantasies cause marked distress or interpersonal difficulty.
- C. The individual is at least age 16 years and at least 5 years older than the child or children in Criterion A.

Note: Do not include an individual in late adolescence involved in an ongoing sexual relationship with a 12- or 13-year-old.

Specify whether:

Exclusive type (attracted only to children)

Nonexclusive type

Specify if:

- Sexually attracted to males
- Sexually attracted to females
- Sexually attracted to both

Specify if:

- Limited to incest

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 SPARTANBURG COUNTY
 AMY W. COX

Diagnostic Features

The diagnostic criteria for pedophilic disorder are intended to apply both to individuals who freely disclose this paraphilia and to individuals who deny any sexual attraction to prepubertal children (generally age 13 years or younger), despite substantial objective evidence to the contrary. Examples of disclosing this paraphilia include candidly acknowledging an intense sexual interest in children and indicating that sexual interest in children is greater than or equal to sexual interest in physically mature individuals. If individuals also complain that their sexual attractions or preferences for children are causing psychosocial difficulties, they may be diagnosed with pedophilic disorder. However, if they report an absence of feelings of guilt, shame, or anxiety about these impulses and are not functionally limited by their paraphilic impulses (according to self-report, objective assessment, or both), and their self-reported and legally recorded histories indicate that they have never acted on their impulses, then these individuals have a pedophilic sexual orientation but not pedophilic disorder.

Examples of individuals who deny attraction to children include individuals who are known to have sexually approached multiple children on separate occasions but who deny any urges or fantasies about sexual behavior involving children, and who may further claim that the known episodes of physical contact were all unintentional and nonsexual. Other individuals may acknowledge past episodes of sexual behavior involving children but deny any significant or sustained sexual interest in children. Since these individuals may deny experiences impulses or fantasies involving children, they may also deny feeling subjectively distressed. Such individuals may still be diagnosed with pedophilic disorder despite the absence of self-reported distress, provided that there is evidence of recurrent behaviors persisting for 6 months (Criterion A) and evidence that the individual has acted on sexual urges or experienced interpersonal difficulties as a consequence of the disorder (Criterion B).

Presence of multiple victims, as discussed above, is sufficient but not necessary for diagnosis; that is, the individual can still meet Criterion A by merely acknowledging intense or preferential sexual interest in children.

The Criterion A clause, indicating that the signs or symptoms of pedophilia have persisted for 6 months or longer, is intended to ensure that the sexual attraction to children is not merely transient. However, the diagnosis may be made if there is clinical evidence of sustained persistence of the sexual attraction to children even if the 6-month duration cannot be precisely determined.

Associated Features Supporting Diagnosis

The extensive use of pornography depicting prepubescent children is a useful diagnostic indicator of pedophilic disorder. This is a specific instance of the general case that individuals are likely to choose the kind of pornography that corresponds to their sexual interests.

Prevalence

The population prevalence of pedophilic disorder is unknown. The highest possible prevalence for pedophilic disorder in the male population is approximately 3%–5%. The population prevalence of pedophilic disorder in females is even more uncertain, but it is likely a small fraction of the prevalence in males.

Development and Course

Adult males with pedophilic disorder may indicate that they become aware of strong or preferential sexual interest in children around the time of puberty—the same time frame in which males who later prefer physically mature partners became aware of their sexual interest in women or men. Attempting to diagnose pedophilic disorder at the age at which it first manifests is problematic because of the difficulty during adolescent development in differentiating it from age-appropriate sexual interest in peers or from sexual curiosity. Hence, Criterion C requires for diagnosis a minimum age of 16 years and at least 5 years older than the child or children in Criterion A.

Pedophilia per se appears to be a lifelong condition. Pedophilic disorder, however, necessarily includes other elements that may change over time with or without treatment: subjective distress (e.g., guilt, shame, intense sexual frustration, or feelings of isolation) or psychosocial impairment, or the propensity to act out sexually with children, or both. Therefore, the course of pedophilic disorder may fluctuate, increase, or decrease with age.

Adults with pedophilic disorder may report an awareness of sexual interest in children that preceded engaging in sexual behavior involving children or self-identification as a pedophile. Advanced age is as likely to similarly diminish the frequency of sexual behavior involving children as it does other paraphilically motivated and normophilic sexual behavior.

Risk and Prognostic Factors

Temperamental. There appears to be an interaction between pedophilia and antisociality, such that males with both traits are more likely to act out sexually with children. Thus, antisocial personality disorder may be considered a risk factor for pedophilic disorder in males with pedophilia.

Environmental. Adult males with pedophilia often report that they were sexually abused as children. It is unclear, however, whether this correlation reflects a causal influence of childhood sexual abuse on adult pedophilia.

Genetic and physiological. Since pedophilia is a necessary condition for pedophilic disorder, any factor that increases the probability of pedophilia also increases the risk of pedophilic disorder. There is some evidence that neurodevelopmental perturbation in utero increases the probability of development of a pedophilic orientation.

Gender-Related Diagnostic Issues

Psychophysiological laboratory measures of sexual interest, which are sometimes useful in diagnosing pedophilic disorder in males, are not necessarily useful in diagnosing this disorder in females, even when an identical procedure (e.g., viewing time) or analogous procedures (e.g., penile plethysmography and vaginal photoplethysmography) are available.

Diagnostic Markers

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 used of such measures is *penile plethysmography*, although the sensitivity and specificity of diagnosis may vary from one site to another. *Viewing time*, using photographs of nude or minimally clothed persons as visual stimuli, is also used to diagnose pedophilic disorder, especially in combination with self-report measures. Mental health professionals in the United States, however, should be aware that possession of such visual stimuli, even for diagnostic purposes, may violate American law regarding possession of child pornography and leave the mental health professional susceptible to criminal prosecution.

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CLEVELAND COUNTY
SPARTANBURG COUNTY
AYAM COX

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Differential Diagnosis

Many of the conditions that could be differential diagnoses for pedophilic disorder also sometimes occur as comorbid diagnoses. It is therefore generally necessary to evaluate the evidence for pedophilic disorder and other possible conditions as separate questions.

Antisocial personality disorder. This disorder increases the likelihood that a person who is primarily attracted to the mature physique will approach a child, on one or a few occasions, on the basis of relative availability. The individual often shows other signs of this personality disorder, such as recurrent law-breaking.

Alcohol and substance use disorders. The disinhibiting effects of intoxication may also increase the likelihood that a person who is primarily attracted to the mature physique will sexually approach a child.

Obsessive-compulsive disorder. There are occasional individuals who complain about ego-dystonic thoughts and worries about possible attraction to children. Clinical interviewing usually reveals an absence of sexual thoughts about children during high states of sexual arousal (e.g., approaching orgasm during masturbation) and sometimes additional ego-dystonic, intrusive sexual ideas (e.g., concerns about homosexuality).

Comorbidity

Psychiatric comorbidity of pedophilic disorder includes substance use disorders; depressive, bipolar, and anxiety disorders; antisocial personality disorder; and other paraphilic disorders. However, findings on comorbid disorders are largely among individuals convicted for sexual offenses involving children (almost all males) and may not be generalizable to other individuals with pedophilic disorder (e.g., individuals who have never approached a child sexually but who qualify for the diagnosis of pedophilic disorder on the basis of subjective distress).

Fetishistic Disorder

Diagnostic Criteria

302.81 (F65.0)

- A. Over a period of at least 6 months, recurrent and intense sexual arousal from either the use of nonliving objects or a highly specific focus on nongenital body part(s), as manifested by fantasies, urges, or behaviors.
- B. The fantasies, sexual urges, or behaviors cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.
- C. The fetish objects are not limited to articles of clothing used in cross-dressing (as in transvestic disorder) or devices specifically designed for the purpose of tactile genital stimulation (e.g., vibrator).

Specify:

- Body part(s)**
- Nonliving object(s)**
- Other**

Specify if:

In a controlled environment: This specifier is primarily applicable to individuals living in institutional or other settings where opportunities to engage in fetishistic behaviors are restricted.

In full remission: There has been no distress or impairment in social, occupational, or other areas of functioning for at least 5 years while in an uncontrolled environment.

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

PETITIONER'S EXHIBIT

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SPARTANBURG COUNTY
AMY W. COX

Paraphilic Disorders

Paraphilic disorders included in this manual are voyeuristic disorder (spying on others in private activities), exhibitionistic disorder (exposing the genitals), frotteuristic disorder (touching or rubbing against a nonconsenting individual), sexual masochism disorder (undergoing humiliation, bondage, or suffering), sexual sadism disorder (inflicting humiliation, bondage, or suffering), pedophilic disorder (sexual focus on children), fetishistic disorder (using nonliving objects or having a highly specific focus on nongenital body parts), and transvestic disorder (engaging in sexually arousing cross-dressing). These disorders have traditionally been selected for specific listing and assignment of explicit diagnostic criteria in DSM for two main reasons: they are relatively common, in relation to other paraphilic disorders, and some of them entail actions for their satisfaction that, because of their noxiousness or potential harm to others, are classed as criminal offenses. The eight listed disorders do not exhaust the list of possible paraphilic disorders. Many dozens of distinct paraphilias have been identified and named, and almost any of them could, by virtue of its negative consequences for the individual or for others, rise to the level of a paraphilic disorder. The diagnoses of the other specified and unspecified paraphilic disorders are therefore indispensable and will be required in many cases.

In this chapter, the order of presentation of the listed paraphilic disorders generally corresponds to common classification schemes for these conditions. The first group of disorders is based on *anomalous activity preferences*. These disorders are subdivided into *courtship disorders*, which resemble distorted components of human courtship behavior (voyeuristic disorder, exhibitionistic disorder, and frotteuristic disorder), and *algoraic disorders*, which involve pain and suffering (sexual masochism disorder and sexual sadism disorder). The second group of disorders is based on *anomalous target preferences*. These disorders include one directed at other humans (pedophilic disorder) and two directed elsewhere (fetishistic disorder and transvestic disorder).

The term *paraphilia* denotes any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners. In some circumstances, the criteria "intense and persistent" may be difficult to apply, such as in the assessment of persons who are very old or medically ill and who may not have "intense" sexual interests of any kind. In such circumstances, the term *paraphilia* may be defined as any sexual interest greater than or equal to normophilic sexual interests. There are also specific paraphilias that are generally better described as *preferential* sexual interests than as intense sexual interests.

Some paraphilias primarily concern the individual's erotic activities, and others primarily concern the individual's erotic targets. Examples of the former would include intense and persistent interests in spanking, whipping, cutting, binding, or strangulating another person, or an interest in these activities that equals or exceeds the individual's interest in copulation or equivalent interaction with another person. Examples of the latter would include intense or preferential sexual interest in children, corpses, or amputees (as a class), as well as intense or preferential interest in nonhuman animals, such as horses or dogs, or in inanimate objects, such as shoes or articles made of rubber.

A *paraphilic disorder* is a paraphilia that is currently causing distress or impairment to the individual or a paraphilia whose satisfaction has entailed personal harm, or risk of harm, to

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	CASE #: 2019-CP-42-03230
	)	
IN THE MATTER OF THE	)	
CARE AND TREATMENT OF	)	ORDER OF COMMITMENT
SHAWN TORLIF DAILY,	)	
	)	
<u>RESPONDENT.</u>	)	

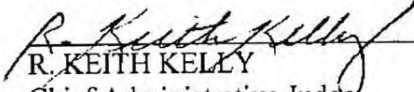
The trial of this case was held in the Spartanburg County Court of Common Pleas the week of March 14, 2022. A jury of citizens from Spartanburg County heard this case pursuant to a request for a jury trial filed by the State. The State was represented by Assistant Attorney General Christopher S. Runyan and Suzanne J. Shaw. The Respondent was represented by Don A. Thompson, Esquire. 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, Shawn Torlif Daily 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, Shawn Torlif Daily is committed to the South Carolina Department of Mental Health for his long-term control, care and treatment;
- (b) Respondent, Shawn Torlif Daily is to continue to be detained at the Spartanburg 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.


 R. KEITH KELLY
 Chief Administrative Judge
 Seventh Judicial Circuit
 Court of Common Pleas

2022 MAR 16 PM 4:29
 CLERK OF COURT
 SPARTANBURG COUNTY
 MAY 11, 2022

FILED

March 16, 2022
 Spartanburg, South Carolina

COUNTY OF SPARTANBURG
 STATE VS.
 Shawn Torlif Daily

AKA:
 Race: W Sex: M Age: 38
 DOB: 9722 SS#:
 Address:
 City, State, Zip:
 DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

in violation of § 16-15-0140

of the S.C. Code of Laws, bearing CDR Code # 2468

☐ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Alicia C. Gibson
 GIBSON, ALICIA C

77705
 SC Bar# Defendant

M. J. A.
 Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of 10 days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2010 GS 42-1742
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-652 (Carrying a Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

§ 47.12 (Public Def/Prob) \$500 \$ 500.00

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$100 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

§ 90.7 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$18.90

TOTAL \$ 1048.90

Clerk of Court/ Deputy Clerk

Court Reporter: T. Green

SCCA/217 (11/2009)

INDICTMENT/CASE#: 2009GS4200261

A/W#: M184282

Date of Offense: 9/1/1999 - 9/1/2000

S.C. Code § : 16-15-0140

CDR Code #: 2468

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

0-15 years & for discretionary fine

A CBI FILED COPY

CLERK OF COURT
SPARTANBURG COUNTY

BY: [Signature] D.C.
DATED: 11/11/2009

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☒

Random Drug/Alcohol testing ☒

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: sexual abuse condition; GPS Monitor
I have accepted this plea to level out and
refer sentence to the judge who hears
the CSC plea. 9/1/2009 2468

☐ Appointed PD or appointed other counsel
 § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2096

Sentence Date: March 18, 2010

FENGAD 800-431-4686

STATE'S EXHIBIT 1

Daily

3-15-22 AP

WITNESSES

Spartanburg County Sheriff's Office

T.K. Tuckman

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

ARREST WARRANT NUMBER

5. CHECKED WARRANTS

M184282

6. CHECKED SIGNATURE

7. ASSESSMENT
FINE CARD MADE

8. TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

Tomie Bill

S. Gundry
Foreperson of Grand Jury
Date: 1-09-09

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

09-GS-42-0261

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JAN 19 2009

TERM

THE STATE
vs.

Shawn T. Daily

Indictment for

SEX/LEWD ACT, COMMIT/ATTEMPT
UPON CHILD <16

SC Code: 16-15-0140

CDR Code: 2468

Class FEL-D

A CERTIFIED COPY

Angela Cox

CLERK OF COURT

SPARTANBURG COUNTY

BY: *[Signature]* D.C.

DATED

522

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2009 JAN 16 AM 11:22

MARC KITCHENS

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JAN 6 9 2009, the
Grand Jurors of Spartanburg County present upon their oath:

SEX/LEWD ACT, COMMIT/ATTEMPT UPON CHILD <16

That Shawn T. Daily, did in Spartanburg County, between the dates of September 1, 1999 through September 1, 2000, he being over the age of fourteen (14) years, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of one **Minor 2**, a minor under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child, of in violation of §16-15-0140, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

524

STATE OF SOUTH CAROLINA

Computer THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS.
Shawn Torlif Daily
AKA:
Race: W Sex: M Age: 38
DOB: 1972 SS#:
Address:
City, State, Zip:
DL#: SID#:

INDICTMENT/CASE#: 2009GS4202645
A/W#: MI10281
Date of Offense: 9/20/2002 - 9/20/2006
S.C. Code § : 16-15-0140
CDR Code #: 2468

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996) 0 to 15 years 3/ or discretionary fine

in violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468
☐ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Alicia Gibson 799705 Shawn Torlif Daily Shawn Torlif Daily
GIBSON, ALICIA C SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of 10 days/months/year and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-13

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-6 (Cr. 16-25-6)
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

§ 47.12 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00

§ 14-1-213 (Drug Court Surcharge) \$100 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

§ 90.7 (SCCJA Surcharge) \$5 \$5.00

3% to County (if paid in installments) \$3.90

TOTAL \$133.90

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. ☐

May serve W/E beginning

Substance Abuse Counseling ☒

Random Drug/Alcohol testing ☒

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: sexual abuse conviction; GPS monitor
I have accepted the plea to lewd act
and defer sentencing to the judge who
hears to CSC plea. 2/10/2010

☐ Appointed PD or appointed other cou
§ 47.12 requires \$5 00 be paid to Cle
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (11/2009)

Presiding Judge

Judge Code: 2096

Sentence Date: March 18, 2010

STATE'S
EXHIBIT 2

Daily

3-15-22 AP

WITNESSES

Spartanburg Co. Sheriff's Office

1. SENTENCE MADE ☒

2. REPORT ENTERED ☒

3. CARD PULLED ☒

4. INDEXED ☒

5. CHECKED WARRANTS ☒

ARREST WARRANT NUMBER

M110281

7. ASSESSMENT AND FINE CARD ☒

8. TRAFFIC VIOLATION COPY ☒

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 5-7-09

VERDICT

Foreperson of Petit Jury

DOCKET NO.

09-GS-42-2645

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAY 11 2009

TERM

THE STATE
vs.

Shawn Torlif Daily

Indictment for

SEX/LEWD ACT, COMMIT/ATTEMPT
UPON CHILD <16

SC Code: 16-15-0140

CDR Code: 2468

Class FEL-D

A CERTIFIED COPY

CLERK OF COURT
SPARTANBURG COUNTY
BY: [Signature] D.C.
DATED: 11/18/2021

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2009 MAY 13 PM 4:42
MARC KITCHENS

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 07 2009, the
Grand Jurors of Spartanburg County present upon their oath:

SEX/LEWD ACT, COMMIT/ATTEMPT UPON CHILD <16

That Shawn Torlif Daily, did in Spartanburg County, between the dates of September 20, 2002 through September 20, 2006, he being over the age of fourteen (14) years, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of one Minor 3 , a minor under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child, of in violation of §16-15-0140, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

COUNTY OF SPARTANBURG

STATE

VS.

Shawn T Daily

AKA:

Race: W Sex: M Age: 38

DOB: 972 SS#: [REDACTED]

Address: N Hwy 14

City, State, Zip: Greer, SC 29651

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Lewd Act on a Minor (0-15 years)

INDICTMENT/CASE#: 2010GS421742

A/W#: DIRECT INDICTMENT

Date of Offense: 7/1/2006

S.C. Code §: 16-15-0140

CDR Code #: 2468

SENTENCE SHEET

☐ CONVICTED OF or☒ PLEADS

No contest

in violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

GRAY, ABEL

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of 10 days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

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§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

§ 90.7 (SCCJA Surcharge) \$5 \$5.00

3% to County (if paid in installments) \$3.90

TOTAL \$133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (11/2009)

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☒Random Drug/Alcohol testing ☒

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

Sexual abuse conditions; GPS monitor

☐ Appointed PD or appointed other counsel
§ 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

March 18, 2010

CERTIFIED COPY
CLERK OF COURT
SPARTANBURG COUNTY
J. H. HARRIS
D.C.
DATEDSTATE'S EXHIBIT 3
Daily
3-15-22AP
PENDING 800-431-6599

WITNESSES

Spartanburg Co. Sheriff's Office

1. SENTENCE MADE

2. REPORT END

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND

FINE CARD MADE

ARREST WARRANT NUMBER

8. TRAFFIC VIOLATION COPY

Direct Indictment

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

10-GS-42-1742

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

FEB 26 2010

TERM

THE STATE

vs.

Shawn Torlif Daily

Indictment for

SEX/LEWD ACT, COMMIT/ATTEMPT
UPON CHILD <16

SC Code: 16-15-0140

CDR Code: 2468

Class FEL-D

A CERTIFIED COPY

Amos Cox
CLERK OF COURT
SPARTANBURG COUNTY
BY: [Signature]
DATED: 11/11/2021

528

App'x 570

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on FEB 22 2010, the
Grand Jurors of Spartanburg County present upon their oath:

SEX/LEWD ACT, COMMIT/ATTEMPT UPON CHILD <16

That Shawn Torlif Daily, did in Spartanburg County, between the dates of July 1, 2006 and April 30, 2008, he being over the age of fourteen (14) years, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of one **Minor 1** a minor under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child, of in violation of §16-15-0140, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended).

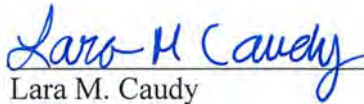
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

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,



Lara M. Caudy
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 29th day of March, 2023.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

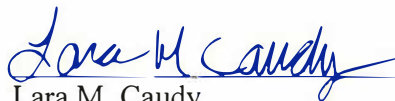
IN THE MATTER OF THE CARE AND
TREATMENT OF SHAWN TORLIF DAILY,

APPELLANT.

APPELLATE CASE NO. 2022-000371

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies that 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 29th day of March, 2023.



Lara M. Caudy
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF SHAWN TORLIF DAILY,

APPELLANT

APPELLATE CASE NO. 2022-000371

FINAL BRIEF OF APPELLANT

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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Rules

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STATEMENT OF ISSUE ON APPEAL

In this sexually violent predator (SVP) case, did the trial judge abuse his discretion by admitting evidence through the state's expert witness concerning Appellant's results from the penile plethysmograph (PPG) test he underwent as part of his precommitment evaluation since the evidence was unreliable in violation of Rule 702, SCRE, State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999), and Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (2010), and the probative value of the evidence was substantially outweighed by the danger of unfair prejudice in violation of Rule 403, SCRE?

STATEMENT OF THE CASE

On September 10, 2019, the Attorney General filed a petition seeking to involuntarily commit Appellant pursuant to the Sexually Violent Predator Act (SVPA). R. 433. The trial commenced on March 14, 2022 before the Honorable R. Keith Kelly, and a jury. R. 1-2. Assistant Attorneys General Christopher Runyan and Suzanne Shaw represented the state. R. 2. Don Thompson represented Appellant. R. 2.

On March 16, 2022, the jury found Appellant was a sexually violent predator pursuant to the SVPA. R. 406, ll. 11-23. Judge Kelly ordered Appellant be committed to the Department of Mental Health for long term control, care, and treatment. R. 520.

This appeal follows.

STATEMENT OF FACTS

Appellant pled guilty in 2010 to three counts of lewd act upon a child and assault and battery of a high and aggravated nature (ABHAN). R. 183, l. 21 – 184, l. 22. He was sentenced to fifteen years suspended upon the service of ten years' imprisonment and five years' probation for each count of lewd act and ten years imprisonment for ABHAN. R. 188, l. 19 – 189, l. 1; R. 194, ll. 15-20; R. 199, ll. 10-16; R. 203, ll. 2-8. All sentences were ordered to be served concurrently. The alleged offenses each involved a different female minor child, the daughters of Appellant's various girlfriends and friends, and occurred between 1993 and 2008. R. 184, ll. 4-9; R. 188, l. 1 – 206, l. 6.

Before Appellant's anticipated release from the Department of Corrections in February 2020, the state filed a petition pursuant to the Sexually Violent Predator Act (SVPA) seeking to involuntarily commit Appellant for long term control, care, and treatment. R. 433. Dr. Christopher Gillen, a psychologist with the Department of Mental Health, was court appointed to evaluate Appellant. R. 299, ll. 14-16; R. 302, ll. 16-18. Dr. Gillen opined that Appellant did not meet the criteria to be committed as a sexually violent predator. R. 319, l. 23 – 320, l. 3. While he found Appellant had been convicted of sexually violent offenses and suffered from a mental abnormality, specifically pedophilic disorder, Dr. Gillen opined Appellant was not likely to engage in acts of sexual violence, as defined under the SVPA, if not confined. R. 306, l. 2 – 307, l. 10; R. 319, l. 3 – 320, l. 3; R. 338, l. 19 – 340, l. 5. He determined Appellant's risk of reoffending was the same as the average sex offender. R. 319, l. 23 – 320, l. 3.

The state sought a second opinion from the Sexual Behaviors Clinic and Lab of the Medical University of South Carolina (MUSC). Dr. Emily Gottfried, the director of the lab, evaluated Appellant and opined Appellant met the criteria to be committed as a sexually violent

predator. R. 170, ll. 2-6; R. 261, ll. 1-11. Like Dr. Gillen, Dr. Gottfried found Appellant had been convicted of sexually violent offenses and suffered from a mental abnormality, also pedophilic disorder. R. 183, l. 21 – 184, l. 3; R. 235, l. 24 – 236, l. 7. However, it was her opinion that because of Appellant’s disorder, “he is at a high risk to reoffend.” R. 256, ll. 7-25; R. 260, l. 16 – 263, l. 11.

As a part of her precommitment evaluation, Dr. Gottfried performed a penile plethysmograph (PPG) on Appellant.¹ R. 222, ll. 2-8. Appellant moved pretrial to suppress any evidence that he underwent a PPG examination and the results and conclusions derived therefrom. R. 410-415. In a written motion, he argued the evidence does not meet the requirements of admissibility of scientific evidence pursuant to Rule 702, SCRE, State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999), and State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979). R. 410-415. Specifically, Appellant asserted the evidence was unreliable. R. 410-415. Quoting this Court’s opinion in Matter of Bilton, 432 S.C. 157, 851 S.E.2d 442 (Ct. App. 2020), Appellant stated that “courts have ‘uniformly’ declared that PPG test results are ‘inadmissible as evidence because there are no accepted standards for this test in the scientific community.’” R. 410-415 (internal citation omitted).

Appellant argued there is a lack of standardization of stimulus sets used by various testing sites and in the interpretation of results. R. 410-415 (internal citation omitted). He further asserted that the Real Child Voices stimulus set lacks adequate publication and peer review. R.

¹ On March 9, 2020, Dr. Gottfried attempted to administer a PPG examination on Appellant as part of her evaluation. However, Appellant refused to consent to the test. On May 1, 2020, the state filed a motion to compel Appellant’s cooperation with the evaluation. The parties submitted briefs in September 2020 in lieu of a hearing. By order filed April 26, 2021, the Honorable J. Derham Cole ordered Appellant to cooperate with Dr. Gottfried’s evaluation, including the PPG test. R. 416-417. Appellant ultimately took the PPG in May 2021. R. 46, l. 19 – 47, l. 1.

410-415. Lastly, Appellant contended that “there are no quality control procedures in place to ensure reliability” and that studies have shown “the accuracy of the PPG can be influenced by many factors which can lead to false positives and false negatives.” R. 410-415.

Before the judge pretrial, Appellant’s counsel argued all testimony related to the PPG should be suppressed because it does not meet the threshold for admissibility pursuant to Rule 702, SCRE, State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999), and State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979). Counsel particularly emphasized factors three and four of the Jones standard arguing there are no quality control procedures to ensure the reliability of the PPG or “consistency of the method [with] recognized scientific laws and . . . procedures.” R. 7, ll. 10-17. He explained that the stimulus set used during the PPG Appellant underwent, called Real Child Voices, was developed by Dr. William Burke of Summerville. Counsel argued that this stimulus set, like other sets used for decades, is unreliable. R. 8, ll. 3-14.

Counsel asserted that it was his understanding that “the PPG is a good tool used in sex offender treatment” but should not be used to evaluate whether an individual will engage in sexually deviant behavior in the future. R. 8, l. 15 – 9, l. 5.

Lastly, Appellant’s counsel also argued the evidence should be excluded pursuant to Rule 403, SCRE, because any probative value of the evidence “is far outweighed by” unfair prejudice. R. 10, ll. 13-20. He asserted that the jury would give the PPG evidence “more weight” than other evidence even though it is not “scientifically reliable.” R. 10, ll. 21-25.

In response to Appellant’s motion, the state proffered the testimony of Dr. Gottfried. She was qualified as an expert in forensic psychology and the penile plethysmography (PPG) without objection. R. 16, ll. 1-25. She has performed twenty-three precommitment evaluations for the sexually violent predator program and fifteen annual reviews. She also has a contract with the

United States Federal Probation and conducts evaluations of individuals convicted of sexual offenses pursuant to this contract. R. 20, l. 4 – 21, l. 5. Dr. Gottfried explained that a PPG is “standardly” administered to all men referred to the Sexual Behaviors Clinic and Lab (SBCL) for a sexual behavior evaluation. R. 50, l. 19 – 51, l. 4; R. 51, ll. 22-25.

Dr. Gottfried is certified by Limestone Technologies, “the company that makes the PPG,” as a “clinical analyst for the PPG.” R. 22, ll. 1-5. To become certified, she completed a two to three day training program where she administered and interpreted PPGs. She had to submit her results for the PPGs she administered as part of the training to make sure she accurately scored them. R. 22, ll. 6-17.

Dr. Gottfried maintained that the PPG “is a physiological measure of male sexual arousal.” R. 24, ll. 6-7. She explained that the examinee sits in a private room by himself. R. 24, ll. 7-8. They have a “strain gauge” they put on their penis. R. 24, ll. 8-10. The examinee is then “presented with a variety of both sexual and neutral stimuli.” R. 24, ll. 10-12. The examiner is “looking to see if they have a greater or equal level of arousal to the deviant stimuli as they do to the [stimuli involving] consenting adults.” R. 24, ll. 4-19. The deviant stimuli involves nonconsensual or abusive scenarios. R. 24, ll. 15-16. In order to measure arousal, the examiner looks for changes in the circumference of the penis and whether the examinee has an erection or the penis is engorged. R. 24, ll. 20-23.

Dr. Gottfried claimed the PPG has been widely used since 1950 and has been subject to peer review, not just in the sexual offending literature, but also in general sexual literature, such as literature involving erectile dysfunction and “general sexual wellbeing and health.” R. 25, ll. 3-14. She further maintained that the Sexual Behaviors Clinic and Lab employs several quality control measures. First, “everybody [at the lab] who is involved in PPG testing is certified (by

Limestone, the manufacturer). So the person who administers it, the person who interprets it, everybody has been clinically certified to do that part of the evaluation.” R. 25, ll. 15-23; R. 50, ll. 13-18. Additionally, the “strain gauge” is calibrated three times before each test. R. 25, l. 24 – 26, l. 3. The SBCL also uses “countermeasures to help make sure it’s a valid administration.” R. 26, ll. 4-5. Essentially, the lab employs measures to prevent the examinee from cheating. The technician measures the examinee’s respirations and his movement. They also require the examinee to press a number on a keypad whenever the stimuli becomes sexual or violent to ensure the individual is paying attention. Lastly, the technician will ask the examinee to briefly describe the scenario he just heard to ensure he is paying attention. R. 26, ll. 5-22.

Dr. Gottfried conceded that there is a lack of standardization in the stimulus sets used by PPG examiners. Most of the countries that use the PPG can show some aspect of child pornography. However, in the United States, there is no medical exception to the federal child pornography laws so the stimulus sets cannot contain child pornography. R. 24, ll. 4-22. In addition to the stimulus sets, Dr. Gottfried admitted there is a lack of standardization in the scoring. In Canada, for example, examiners “use a much less conservative cut score” to measure arousal. R. 28, l. 23 – 29, l. 1. In the United States, examiners use a “cut score of 5 millimeters of change” to the circumference of the penis, while in Canada, examiners use a cut score of one to 1.5 millimeters of change. R. 29, ll. 2-5.

Dr. Gottfried contended that the PPG is “generally accepted in the mental health and medical field” but again conceded standardization is a problem. R. 36, ll. 11-19. She testified that she is a member of an “international standardization group” which strives to standardize the PPG. However, there is a lot of resistance worldwide because various examiners do not want to change their methods. R. 37, ll. 1-10. Dr. Gottfried explained that another recognized problem

is that the PPG does not “always have expected results.” R. 37, ll. 11-12. For example, an individual who sexually offended against children may not “always show arousal while undergoing a PPG to children.” R. 37, ll. 12-15.

Dr. Gottfried personally uses two stimulus sets when administering the PPG: the Marshall and the Real Child Voices. R. 56, ll. 1-9. Examiners usually use different stimulus sets and those are the two that Dr. Gottfried chooses to use. R. 56, ll. 8-11. However, she “tailors” the stimulus sets for each individual examinee. For example, if an examinee’s sexual offenses are against children, she may “skip” the stimuli depicting rape of an adult woman. R. 62, l. 23 – 64, l. 2. Dr. Gottfried maintained that tailoring the stimulus set does not mean the PPG lacks standardization. R. 64, ll. 3-16.

Real Child Voices, one of the stimulus sets used by Dr. Gottfried, is a relatively new stimulus set developed by Dr. William Burke of Summerville. Dr. Gottfried admitted that she and Dr. Gregg Dwyer, the former director of the SBCL, both collaborate with Dr. Burke. Dr. Burke also has a volunteer faculty appointment at MUSC. R. 57, ll. 9-16. The Real Child Voices stimulus set comes with all PPGs sold by Limestone Technologies and Dr. Burke profits off these sales. R. 57, l. 17 – 58, l. 6. Another available stimulus set in the United States is called the Monarch. R. 58, ll. 12-18.

Dr. Gottfried explained that there are “three widely available [PPG] systems.” R. 57, ll. 17-19. One of these systems is the Limestone. Dr. Gottfried testified that she prefers the Limestone system because of “the calibration and standardization stuff.” She contended it is the “most reliable” system available. R. 57, ll. 17-23. This testimony demonstrates that there is a lack of standardization in the “systems” used by various examiners in addition to the stimulus sets.

When questioned about test/retest reliability, Dr. Gottfried explained that the examinee is presented with multiple stimuli presentations which enables the examiner to look for consistency within a single PPG test. R. 60, ll. 9-23. However, she admitted that she could not retest an individual a week later and obtain consistent results. R. 60, l. 24 – 61, l. 8.

After Dr. Gottfried's *in camera* testimony, the trial judge took the matter under advisement. R. 72, ll. 19-25. The following morning he ruled Dr. Gottfried's testimony concerning the PPG Appellant underwent and the results and conclusions derived therefrom was admissible. The judge explained that he reviewed Rule 702, Council, and Jones. R. 139, ll. 14-19. In support of his ruling, he emphasized that Dr. Gottfried testified the PPG has been subjected to peer review and has been the subject of numerous publications. R. 139, l. 19 – 140, l. 3. She also testified that "this method [stimulus set] is in use in over 50 laboratories throughout the United States . . . And while there is some international cooperation, there are different standards for some countries and the United States." R. 140, ll. 4-13. The judge concluded that based on this testimony, "there is a standard application in the United States." R. 140, ll. 14-16. As to quality control procedures, the judge found this standard was met. He highlighted Dr. Gottfried's testimony that examiners in the United States use a "conservative threshold" to "err on the side of a false negative rather than a false positive." R. 140, ll. 16-23. Lastly, the judge concluded there was consistency of the method since the Real Child Voices stimulus set comes standard with the PPG system when purchased from the manufacturer and Dr. Gottfried and other technicians use standard instructions when administering the exam. R. 141, ll. 3-16. The judge concluded that Appellant's arguments or concerns "go to the weight of the testimony, not its admissibility." R. 141, l. 23 – 142, l. 2.

In her testimony before the jury, Dr. Gottfried explained that the PPG “is a physiological test, *objective* test of male sexual arousal.” R. 222, ll. 9-11 (emphasis added). She maintained that the test is useful “in evaluations like these” because people have an “understandable motivation or reason for not being completely forthcoming about what is arousing to them, especially if it’s something that can cause them shame, or could get them civilly committed.” R. 220, ll. 3-18. When later asked why she uses the PPG, Dr. Gottfried asserted, “[I]t’s really, really important to *objectively* know what this person is aroused by, because we can, for the most part, reasonably expect that somebody is not going to come in and say, ‘I’m aroused by children.’ Or they may say, ‘I was, but I’m not now.’ And so *the PPG is going to give you data about today on the day of the assessment what they were aroused by* in the laboratory.” R. 232, ll. 8-25 (emphasis added). She further maintained that the PPG “has the greatest validity and reliability, so the statistics for it are the best for people who are aroused by children.” R. 233, ll. 1-6.

Dr. Gottfried contended that Appellant’s “results were right in line with his offenses. So he had clinically significant sexual arousal to trials featuring sexual activity with a female infant, a preschool aged female child, and a grammar school or elementary school aged child. And those were really consistent with his offense behaviors.” R. 233, l. 21 – 234, l. 4. She further maintained Appellant “didn’t show clinically significant arousal to consenting adults.” R. 234, ll. 5-6. Dr. Gottfried told the jury that when she “did the mathematical equations” Appellant’s arousal to prepubescent female children was “more than two and a half standard deviations greater [than his arousal to consenting adults]. So what that means without explaining standard deviations and these scores, is that he [Appellant] showed a clear preference for children - - for the child scenarios over the adult scenarios.” R. 234, ll. 6-13.

STANDARD OF REVIEW

“The admission or exclusion of evidence is a matter within the trial court’s sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a manifest abuse of discretion accompanied by probable prejudice.” Matter of Bilton, 432 S.C. 157, 161-62, 851 S.E.2d 442, 444 (Ct. App. 2020), reh’g denied (Dec. 22, 2020) (quoting State v. Commander, 396 S.C. 254, 262-263, 721 S.E.2d 413, 417 (2011)) (internal quotation marks omitted). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” Id. at 162, 851 S.E.2d at 444 (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)) (internal quotation marks omitted).

ARGUMENT

In this sexually violent predator (SVP) case, the trial judge abused his discretion by admitting evidence through the state's expert witness concerning Appellant's results from the penile plethysmograph (PPG) test he underwent as part of his precommitment evaluation since the evidence was unreliable in violation of Rule 702, SCRE, *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999), and *Watson v. Ford Motor Co.*, 389 S.C. 434, 699 S.E.2d 169 (2010), and the probative value of the evidence was substantially outweighed by the danger of unfair prejudice in violation of Rule 403, SCRE.

The trial judge abused his discretion by permitting Dr. Emily Gottfried, who was qualified as an expert in “forensic psychology and sexual offending behavior,” to testify about the PPG test Appellant underwent and the results and conclusions derived therefrom since the evidence was unreliable in violation of Rule 702, SCRE, *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999), and *Watson v. Ford Motor Co.*, 389 S.C. 434, 699 S.E.2d 169 (2010). Moreover, the probative value of the evidence was substantially outweighed by the danger of unfair prejudice and should have been excluded pursuant to Rule 403, SCRE.

“The admission of expert testimony is governed by Rule 702, SCRE, which provides: If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” *Watson v. Ford Motor Co.*, 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010).

“[E]xpert testimony receives additional scrutiny relative to other evidentiary decisions. Specifically, in executing its gatekeeping duties, the trial court *must* make three key preliminary findings which are fundamental to Rule 702 before the jury may consider expert testimony.

First, the trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury. Next, while the expert need not be a specialist in the particular branch of the field, the trial court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter. Finally, *the trial court must evaluate the substance of the testimony and determine whether it is reliable*. Id. (emphasis added) (internal citation marks omitted).

To determine reliability, the trial judge should apply the factors outlined by our Supreme Court in State v. Jones, 273 S.C. 723, 731, 259 S.E.2d 120, 124 (1979), including: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures. State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999). “Further, if the evidence is admissible under Rule 702, SCRE, the trial judge should determine if its probative value is outweighed by its prejudicial effect. Id. (citing Rule 403, SCRE).

Dr. Gottfried vaguely maintained that the PPG has been subjected to peer review both in the “sexual offending literature” and the “general sexual literature.” R. 19, l. 16 – 20, l. 1; R. 25, ll. 2-14. While she also stated the Real Child Voices stimulus set, which was utilized during the PPG Appellant underwent, has been peer reviewed, she did so in a conclusory manner. R. 45, ll. 12-14.

Dr. Gottfried openly admitted there is a lack of standardization in the stimulus sets used by PPG examiners. Most of the countries that use the PPG can show some aspect of child pornography. However, in the United States, there is no medical exception to the federal child pornography laws so the stimulus sets cannot contain child pornography. R. 28, ll. 4-22. In

addition to the stimulus sets, Dr. Gottfried admitted there is a lack of standardization in the scoring. In Canada, for example, examiners “use a much less conservative cut score” to measure arousal. R. 28, l. 23 – 29, l. 1. In the United States, examiners use a “cut score of 5 millimeters of change” to the circumference of the penis, while in Canada, examiners use a cut score of one to 1.5 millimeters of change. R. 29, ll. 2-5.

Dr. Gottfried contended that the PPG is “generally accepted in the mental health and medical field” but again conceded standardization is a problem. R. 36, ll. 11-19. She testified that she is a member of an “international standardization group” which strives to standardize the PPG. However, there is a lot of resistance worldwide because various examiners do not want to change their methods. R. 37, ll. 1-10. Dr. Gottfried explained that another recognized problem is that the PPG does not “always have expected results.” R. 37, ll. 11-12. For example, an individual who sexually offended against children may not “always show arousal while undergoing a PPG to children.” R. 37, ll. 12-15.

Respectfully, the trial judge appeared to ignore this evidence concerning the lack of standardization and based his ruling in large part on Dr. Gottfried’s testimony that over fifty laboratories throughout the United States use the Real Child Voices stimulus set. See R. 140, ll. 4-16. Additionally, while the trial judge credited Dr. Gottfried’s testimony about the quality control procedures, these procedures were designed to prevent individuals from cheating. The quality control measures did not relate to one of the central concerns with PPGs—whether the subjects are aroused by what the stimulus set claims is the focus of the arousal.

In Matter of Bilton, 432 S.C. 157, 851 S.E.2d 442 (Ct. App. 2020), this Court addressed a narrow issue regarding the admissibility of PPG test results through an expert who did not administer or observe the PPG testing nor review the test’s raw data. This Court held that “due

process does not allow a testifying expert to be a pipeline for someone else's scientific work to be admitted into evidence without a baseline demonstration of reliability.” Id. at 167, 851 S.E.2d at 446. It concluded the trial judge abused his discretion by admitting the PPG evidence and, finding the error was not harmless, remanded for a new commitment trial. Id. at 167, 851 S.E.2d at 447. In so holding, this Court emphasized that the PPG “test is controversial and has been criticized for a lack of standardization and for being subject to manipulation.” Id. at 162, 851 S.E.2d at 444 (citing United States v. Rhodes, 552 F.3d 624, 626-627 (7th Cir. 2009) and United States v. Weber, 451 F.3d 552, 565 (9th Cir. 2006)). It noted that “with limited exceptions . . . courts have ‘uniformly’ declared that PPG test results are ‘inadmissible as evidence because there are no accepted standards for this test in the scientific community.’” Id. at 162-163, 851 S.E.2d at 444 (quoting Doe ex rel. Rudy-Glanzer v. Glanzer, 232 F.3d 1258, 1266 (9th Cir. 2000)). This Court further emphasized that “some authorities take the position that the PPG has value in treating sex offenders but that concerns about reliability and a lack of uniform standards preclude its admission as evidence at trial.” Id. at 164, 851 S.E.2d at 445 (citing Commonwealth v. Ortiz, 93 Mass.App.Ct. 381, 100 N.E.3d 790, 796-797 (2018) (collecting cases)). Other “jurisdictions have held that an expert may rely on a PPG as a basis for the expert’s opinion but have expressly declined to consider whether the test results should be disclosed to the jury given the special weight the jury is likely to afford things that have the appearance of scientific evidence.” Id. at 164-165, 851 S.E.2d at 445 (citing In re Commitment of Sandry, 367 Ill.App.3d 949, 306 Ill.Dec. 202, 857 N.E.2d 295, 317 (2006)).

In Billups v. Commonwealth, 652 S.E.2d 99, 101-02 (Va. 2007), the Virginia Supreme Court held an expert’s report that relied on PPG testing was inadmissible, even at a sentencing

hearing. The court in Billups approached PPG testing with a critical eye and ultimately concluded it was inadmissible:

Advancements in the sciences continually outpace the education of laymen, a category that includes judges, jurors and lawyers not schooled in the articular field under consideration. Consequently, there is a risk that those essential components of the judicial system may gravitate toward uncritical acceptance of any pronouncement that appears to be “scientific,” and the more esoteric the field, the more difficult it becomes for laymen to greet it with skepticism. That tendency has given rise to frequent complaints of “junk science” in the courts. To guard against that risk, we continue to require a “threshold finding of fact with respect to reliability of the scientific method offered. . . .”

Id. at 101-02. “Esoteric” and “junk science” are both accurate descriptions of PPG testing. See also United States v. Medina, 779 F.3d 55, 65 (1st Cir. 2015) (discussing reliability problems with PPG testing); Gentry v. State, 443 S.E.2d 667, 669 (Ga. Ct. App. 1994) (“Given the rejection of [PPG] evidence by other states, and particularly the uncertainty within the scientific community of its reliability, we hold that it is inadmissible in Georgia.”); United States v. Powers, 59 F.3d 1460, 1470-71 (4th Cir. 1995) (holding the PPG did not meet the scientific standards for admissibility and emphasizing the “extensive, unanswered evidence weighing against the scientific validity of the penile plethysmograph test.”).

The PPG Appellant underwent, which included the Real Child Voices stimulus set, lacked reliability and the trial judge erred in admitting it. Because it was unreliable, Dr. Gottfried’s corresponding testimony had no probative value. Assuming the evidence had probative value, it was outweighed by the danger of unfair prejudice to Appellant and should have been excluded pursuant to Rule 403. Because the PPG test and its results had the appearance of scientific evidence, it is likely the jury afforded the evidence “special weight.” See Bilton, 432 S.C. at 164-165, 851 S.E.2d at 445. The error was highly prejudicial because of the risk noted by the Virginia Supreme Court in Billups that laymen, especially jurors, would

gravitate toward uncritical acceptance of the PPG when confronted with such a foreign and unusual trial like an SVP case. Dr. Gottfried urged the jury in this direction, telling them that the PPG was an “*objective* test of male sexual arousal.” R. 222, ll. 9-11 (emphasis added). She further claimed it is “really, really important to *objectively* know what this person is aroused by, because we can . . . reasonably expect that somebody is not going to come in and say, ‘I’m aroused by children.’ Or they may say, ‘I was, but I’m not now.’ And so *the PPG is going to give you data . . . what they were aroused by* in the laboratory.” R. 232, ll. 8-25 (emphasis added). The PPG was one of the main bases for her diagnosis of pedophilic disorder. The admission of this highly prejudicial evidence warrants reversal.

CONCLUSION

Based on the foregoing argument, this Court should reverse Appellant's commitment and remand this matter for a new trial.

Respectfully Submitted,

s/ Lara M. Caudy _____
Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of March, 2023.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF SHAWN TORLIF DAILY,

APPELLANT

APPELLATE CASE NO. 2022-000371

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at the primary email address listed in the Attorney Information System (AIS), this 29th day of March, 2023.

s/ Lara M. Caudy
Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

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IN THE MATTER OF THE CARE AND TREATMENT
OF SHAWN TORLIF DAILY,

APPELLANT

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Judge Kelly did not abuse his discretion in admitting evidence regarding a penile plethysmograph test performed by the State's expert, which she used in formulating her opinion, because the evidence established penile plethysmography is recognized and accepted in the field of sex offender evaluation and treatment as a reliable, objective measure of deviant sexual interests.

STATEMENT OF THE CASE

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

STATEMENT OF FACTS

In 2010, Appellant Shawn Torlif Daily pled guilty in Spartanburg County to three counts of lewd act on a minor, and was sentenced to fifteen years incarceration on each count, suspended upon service of ten years and five years probation. Two of the sentences were consecutive, and the third was concurrent. Prior to Appellant's release from incarceration, Respondent State of South Carolina commenced proceedings pursuant to the Sexually Violent Predator Act (SVPA) seeking Appellant's commitment to the South Carolina Department of Mental Health (DMH) for long term control, care and treatment as a sexually violent predator. The matter was called for a jury trial on March 14, 2022, before the Honorable R. Keith Kelly, Circuit Court Judge.

Prior to trial, Appellant moved to exclude any testimony by the State's expert regarding a penile plethysmograph (PPG) performed during a comprehensive psychosexual evaluation of Appellant's mental status and risk to reoffend sexually. (Notice of Motion and Motion to Suppress Testimony Related to PPG Testing and Results, filed December 29, 2021; Record on Appeal [R.], pp.410-415). The State filed a Memorandum opposing the Motion to Suppress. (State's Memorandum in Opposition to Motion to Suppress Testimony Related to PPG Testing and Results, with Exhibits A-D, filed March 10, 2022; R., pp. 416-432). Before swearing the jury, Judge Kelly conducted a full evidentiary hearing pursuant to State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999), during which Emily Gottfried, Ph.D. of the Medical University of South Carolina (MUSC), testified for the State.

Pre-Trial Testimony and Ruling

Dr. Gottfried is an Associate Professor of Psychiatry and Behavioral Sciences at MUSC, and the Director of MUSC's Sexual Behaviors Clinic and Lab (SBCL). In her capacity as Director, she oversees all SBCL administrative duties, and performs most of the forensic evaluations. She sits on the Executive Committee of the Association for Treatment of Sexual Abusers (ATSA),

chairs the ATSA Research Committee, and is president-elect of the American Psychological Association Division 12 (clinical psychology and assessment). She is a member of the South Carolina Association for the Treatment of Sexual Abusers, the American Psychological Association, the American Academy of Forensic Sciences, the Society for Personality Assessment, and other professional associations. She is also part of an international standardization research group focusing on the PPG. (Trial Transcript [TT], pp. 21-23; R., pp. 17-19).

Dr. Gottfried testified she has approximately thirty-six peer-reviewed publications or book chapters in peer-reviewed scholarly books. She has presented over sixty times at professional conferences, and gives trainings and webinar presentations to national and international universities. Four or five of her peer-reviewed publications, and ten to twelve of her conference presentations related specifically to the PPG. During her tenure at MUSC, Dr. Gottfried has requested PPG testing in approximately fifty-two evaluations for cases involving the SVPA, private pre-trial matters, federal probation of sex offenders, and licensing board cases. (TT, pp. 23-24; R., pp. 19-20).

Consistent with best practices in the field, Dr. Gottfried conducts a comprehensive evaluation that includes data from multiple sources. She conducts a clinical interview with the person, reviews all collateral information, including mental health records, medical records, detention center and prison records. She then conducts a battery of assessment measures, including the PPG, and scores the results on clinical rated assessment measures to look for risk factors and other factors to guide her clinical opinion. (TT, p. 25; R., p. 21).

Dr. Gottfried is specifically trained and certified by Limestone Technologies, which developed and manufactured the PPG system used at MUSC, to conduct and interpret PPG tests. The training includes classroom/online instruction on the history, background and literature of the

PPG test. After those classes, Limestone conducts two or three full day training sessions requiring actual administration and interpretation of PPG tests in real time. Before certification, Limestone then requires submission of PPG test results that are reviewed for accuracy. The SBCL has been certified as both a clinical and a research laboratory. (TT, p. 26; R., p. 22).

Dr. Gottfried testified a PPG test is only one data point she considers for evaluation purposes, but it is important because sexual arousal to nonconsensual or abusive stimuli is a strong predictor of sexual recidivism. People being evaluated may not be forthcoming about their sexual arousals, and the PPG test provides an objective measure of male sexual arousal, specifically whether they have a greater or equal level of arousal to deviant stimuli as they do to consenting adult scenarios. The PPG test has been peer reviewed in both the sex offender and general sexual behavior literature. (TT, pp. 27-29; R., pp. 23-25).

Everyone involved in the PPG test process at the SBCL is clinically certified to conduct their part of the test, and the SBCL has a standard protocol used in every PPG test performed there. The gauge used in a test must be calibrated three times before the test can start. The testing equipment and software includes countermeasures in the event the person does something that might interfere with the test results, *i.e.*, moving around, changes in breathing pattern, not paying attention, etc. The person is not required to masturbate before the test begins or allowed to touch his penis during the test, which would show up on the test and invalidate it. The SBCL uses a very conservative cut score of 5mm change in penis circumference for significant arousal, while Canada labs use a cut score of 1.5mm. (TT, pp. 30-33; R., pp. 26-29).

ATSA Practice Guidelines reference the PPG test in multiple places, stating that research supported assessment methods such as the PPG test may provide objective behavioral data that may not be readily established through other means, and supporting the responsible use of the PPG

test as a data point in sexual behavior evaluations and treatment. She stated “responsible use” means you do not administer a PPG test in the absence of any other data and then base an opinion regarding diagnosis or risk solely on the PPG test result. (TT, pp. 33-35; R., pp. 29-31).

Dr. Gottfried also testified the Diagnostic and Statistical Manual, 5th Ed., (DSM-5) recognizes use of the PPG test. In addition, a book published in 2019 entitled “Sexually Violent Predators: A Clinical Science Handbook,” includes a chapter (Chapter 15) entitled “The Use of Penile Plethysmography in SVP Assessment and Treatment Decision-Making,” written by Dr. Joseph Plaud, who is an expert on PPG testing. Dr. Plaud determined the PPG test is important in both the evaluation and treatment of individuals convicted of sex offenses and being considered for civil commitment as a sexual predator. Dr. Gottfried testified the PPG test is generally accepted in the mental health and medical field. (TT, pp. 36-40; R., pp. 32-36).

Dr. Gottfried acknowledged that standardization of PPG testing is an on-going issue arising primarily from the fact that some countries can do things other countries cannot do, and there are efforts to formulate international standards. Canada uses stimuli that include nude children, which labs in the United States cannot use, and countries do not want to change their methods just for purposes of international standardization. (TT, pp. 40-41; R., pp. 36-37).

Dr. Gottfried further testified it has been noted the PPG test does not always have expected results, i.e., someone with known offenses against children do not always show arousal to stimuli involving children during a PPG test. She stated men who sexually offend against children may do so for multiple reasons that are not due to sexual arousal to prepubescent children, so it would be expected that they would not show sexual arousal to children in the PPG test. A 2019 meta-analysis study considered multiple groups of men, including men who had sexually offended against children, men who had not sexually offended against children, men who had never been

arrested before, and men who had recidivated by committing a new sexual offense. The results indicated a “staggering” ability of the PPG to discriminate between the group of men who had offended against children and other groups.” (TT, pp. 41, 47-48; R., pp. 37, 43-44).

The SBCL uses a very conservative cut score of 5mm increase in penis circumference to measure significant sexual arousal to a stimulus set, which minimizes the possibility of false positive results. It also utilizes two stimulus sets, the Marshall set and the Real Child Voices (RCV) set. The Marshall set was developed a long time ago, and features a monotone male voice reading sexual scenarios featuring prepubescent, pubescent, adult and neutral stimuli, with coercion, persuasion, sexual violence and consenting adults. The RCV uses visual plus audio stimulus sets, which have been shown in large meta-analysis studies to be the best stimuli, and includes actors’ voices and sound effects featuring prepubescent, pubescent, adult, coercion, persuasion and neutral stimuli. Both sets are tailored to the person’s offending patterns, but all tests include the neutral and consensual adult stimulus sets. (TT, pp. 41-45; R., pp. 37-41).

Dr. Gottfried testified all PPG systems sold by Limestone include the RCV stimulus set, and it is used in between fifty and one hundred labs in the United States and Canada. It is also used in the sexually violent predator treatment programs in Minnesota, California, Illinois, New York and Missouri. (TT, pp. 45-46; R., pp. 41-42). The SBCL uses both the Marshall set and the RCV set in order to gather as much data as possible, and while the Marshall set has been used and studied for a long time, the literature suggests visual plus audio has the highest reliability. (TT, p. 47; R., p. 43). The RCV stimulus set has been peer reviewed, and studies have been approved for presentation at professional conferences. (TT, pp. 49-50; R., pp. 45-46).

Specifically regarding Appellant, Dr. Gottfried testified all the evaluators diagnosed him with pedophilic disorder, sexually aroused to female children, exclusive type, but Appellant never

admitted he was sexually aroused by children. The battery of assessment measures Dr. Gottfried used indicated Appellant tried to “self-preserve” and not admit any flaws within himself, so his self-report regarding his sexual arousal might not be as valid as someone who was not defensive. The PPG test was important to help determine whether Appellant was currently sexually aroused by children and had no strategies to mitigate his arousal. (TT, pp. 50-53; R., pp. 46-49).

On cross-examination, Dr. Gottfried confirmed the PPG test was part of the SBCL’s standard battery of tests performed in every evaluation of adult males sent to the lab for evaluation and/or treatment. The lab uses the PPG test because it provides physiological data regarding the person’s sexual arousal patterns. (TT, pp. 55-57; R., pp. 51-53).

Dr. Gottfried again testified the Marshall stimulus set has been used for a long time, and the SBCL uses a combination of the Marshall sets and the RCV stimulus sets. Dr. Bill Burke of Summerville, SC, and Musolf (not affiliated with MUSC) developed the RCV sets, which are included with every PPG system sold by Limestone. Dr. Burke has a volunteer faculty appointment at MUSC, and Dr. Gottfried collaborates with him. When asked if Dr. Burke makes a profit off the RCV sets sold, Dr. Gottfried testified: “I would assume so. I’m not privy to that.” (TT, pp. 59-62; R., pp. 55-58).

Judge Kelly took the matter under advisement. After jury selection the next day, Judge Kelly discussed the Council factors in determining whether to admit scientific evidence. On the issue of peer review, Judge Kelly found the PPG test has been peer reviewed and the subject of numerous publications, including the DSM-5. (TT, pp. 143-144; R., p. 139-140).

Judge Kelly found the PPG test is used in over fifty laboratories throughout the United States and some international labs. While there are different standards for some countries, Judge

Kelly found there is a standard application of the PPG test in the United States. (TT, p. 144; R., p. 140).

As to the quality control factor, Judge Kelly found the standards Dr. Gottfried testified about met the requirement, including the use of a conservative threshold that errs on the side of false negative results rather than false positive results. Dr. Gottfried's testimony regarding how the PPG test is administered also satisfied the quality control requirement. (TT, pp. 144-145; R., pp. 140-141).

Judge Kelly found Dr. Gottfried's testimony established the PPG testing method was consistent with recognized laws and procedures. Specifically, the SBCL uses standard instructions provided by the system manufacturer, as well as utilizing methods to prevent manipulation of the test data. Based on his findings, Judge Kelly found the PPG test evidence was admissible, and Appellant's arguments went to the weight of the evidence, not its admissibility. (TT, pp. 145-146; R., pp. 141-142).

Trial Testimony

Dr. Gottfried

Before the jury, Dr. Gottfried was qualified as an expert in forensic psychologist in sexual offending behavior. She testified about her qualifications, and the protocol she follows in conducting pre-commitment evaluations under the SVPA. (TT, pp. 173-182; R., pp. 169-178).

In conducting Appellant's evaluation, Dr. Gottfried reviewed police and court documents related to his sex offenses, records related to Appellant's incarceration, Appellant's criminal history report, and the report from the initial evaluation conducted by a South Carolina Department of Mental Health (DMH) psychologist. She testified these are the type of records typically relied on by experts in her field. (TT, pp. 184-185; R., pp. 180-181).

Dr. Gottfried testified an individual's past behavior is the best predictor of future behavior, and for purposes of recidivism risk, it is important to look at the characteristics of prior offenses, including the facts of the offenses and victim characteristics, to determine if there is a pattern of behavior. She stated she considers all criminal offense allegations as a data point, and allegations that did not result in convictions do not get as much weight, but all of it is important for purposes of a possible diagnosis. As to Appellant, Dr. Gottfried found it significant that he did not have a nonsexual criminal history, and his criminal sex offenses were restricted to prepubescent females. (TT, pp. 185-187; R., pp. 181-183).

According to records Dr. Gottfried reviewed, Respondent was convicted in 2010 of three counts of lewd act with a child under the age of sixteen. The offenses occurred in 1992 or 1994, between 2002-2006 and approximately 2006-2008. He was also charged in 2010 with another lewd act offense, but pled guilty to assault and battery of a high and aggravated nature. Dr. Gottfried testified it is necessary to examine the underlying behavior behind the convictions as part of assessing whether there is a pattern of conduct that may indicate the person has a mental abnormality or personality disorder. (TT, pp. 187-193, State's Exhibits 1, 2 and 3 [Sentencing Sheets]; R., pp. 183-189, 521--529).

The records indicated the mother of a victim in one of the 2010 convictions (Z.G.) was an acquaintance of Appellant. Z.G. was six to seven years old at the time of the offenses in 1999, but did not disclose anything until 2008. She reported Appellant sexually touched and hurt her in various ways, including exposing himself to her, asking her to sit on his penis, waking up in Appellant's bed with no clothes on, putting his hand down her pants and rubbing her, and washing her between her legs very slowly while bathing her. When interviewed by law enforcement, Appellant said he did not remember anything like what the victim reported, but attempted suicide

two days later. Dr. Gottfried testified this began setting up a pattern of Appellant offending against prepubescent female children by assuming a caretaker role and using some grooming behaviors. (TT, pp. 193-195; R., pp. 189-191).

When Dr. Gottfried questioned Appellant about the Z.G. offenses, he initially said all he remembered was an allegation that he rubbed Z.G.'s buttocks underneath her underwear. He stated he was taking Ambien (sleeping medication) at the time, and he did not know if or when anything occurred, but he had "no doubt of their allegations." (TT, pp. 196-198; R., pp. 192-194).

Another of Appellant's 2010 convictions involved the daughter (S.B.) of a woman Appellant described as his female best friend. In 2006, when S.B. was approximately six years old, it was reported to law enforcement that Appellant inappropriately touched S.B. at the YMCA, but S.B.'s mother refused to allow law enforcement to interview S.B., so no charges were filed at that time. S.B. subsequently told her mother Appellant sat on the couch naked with a blanket over his lap and had S.B. sit on his lap and she could feel his penis. S.B. further disclosed that when she was with Appellant, he insisted on bathing her and would rub her chest while she was in the tub. S.B.'s mother confronted Appellant, who denied the allegations, and all contact between the mother, S.B. and Appellant ceased. In 2008, S.B.'s mother reported the abuse, which occurred from 2002 (age four) to 2006 (age 6). (TT, pp. 198-200; R., pp. 194-196).

Appellant told Dr. Gottfried that he babysat S.B. every three to four months and would either keep her at his house or take her to the YMCA pool because her mother wanted her to learn how to swim. He stated when they were at the pool, he would help SB put on or take off her bathing suit, and on one occasion S.B. leaned back and her hand touched his penis over his clothing. He again stated he had Ambien in his system and could not recall if he had an erection at that time. He denied the allegations about him sitting on the couch naked, stating he had "never

been unclothed around [SB] consciously, but he pled no contest to the charges because he had no way to refute the allegations and could not say if happened or it did not happen. Dr. Gottfried found the details significant because Appellant offended against a child while he was in a caretaking role, he was best friends with the child's mother, he groomed the child, and blamed the offenses on him not being in his right mind. (TT, pp. 200-203; R., pp. 196-199).

Appellant was also convicted of lewd act on a minor in connection with offenses against a third victim (B.H.) (State's Exhibit 3 [Sentencing Sheet]; R., pp. 527-529). According to records, B.H.'s mother dated Appellant for seven years, and met B.H. when she was four years old. B.H.'s mother reported that she and Appellant were never physically intimate during their seven year relationship. In 2009, the mother informed law enforcement that Appellant molested B.H. between 2006 and 2008 by digitally penetrating her vagina and rubbing her back in her "private area." When Dr. Gottfried asked Appellant about the allegations, he stated he had little recollection or memory because of taking more Ambien than he should have, and he could not refute the allegations. Dr. Gottfried found this offense significant because it involved another minor Appellant had access to through a relationship with the minor's mother, and Appellant assumed a caretaker role for the minor. (TT, pp. 203-207; R., pp. 199-203).

Appellant was charged with lewd act on a minor arising from an incident in 1994 or 1995 involving a four-year-old victim (B.J.) that was reported in 2009, and he pled guilty in 2010 to assault and battery of a high and aggravated nature. Records indicated Appellant knew B.J. because he had worked with her mother, and when B.J. was in the bathroom, Appellant touched her vagina and put her hand on his penis. When question by law enforcement in 2009, Appellant stated he had no memory of going to the location where the molestation occurred. Dr. Gottfried testified B.J. was Appellant's first victim, and the incident started Appellant's fifteen to seventeen

year pattern of offending against prepubescent females he had access to via relationships with their mothers. (TT, pp. 207-210; R., pp. 203-206).

Dr. Gottfried testified she also reviewed the mental health evaluation report by the DMH evaluator, and noted the evaluator used the same risk assessment measures she used and got the same results she did. The evaluator determined Appellant had other risk factors, including sexual preference for prepubescent children, a lack of emotionally intimate relationships with adults, emotional congruence with children, and some offense supportive attitudes. The evaluator also diagnosed Appellant with pedophilic disorder, but concluded he did not meet the criteria for civil commitment under the SVPA. (TT, pp. 210-212; R., pp. 206-208).

Dr. Gottfried then testified about the battery of tests she performs as part of her evaluation, which included a self-report computer test, physiological measures and ““clinician scored”” assessments that consider everything learned about the person being evaluated. This battery of tests provides multiple data points regarding psychological functioning, mental health history, symptom history, sexual interest, substance abuse, and sexual behaviors. Dr. Gottfried stated the tests she uses are the type other experts in her field reasonably rely on in rendering opinions, it is very important to have multiple data points as a basis for any opinion, and it would be unethical to base an opinion on one data point. (TT, pp. 212-215; R., pp. 208-211).

The self-report assessment results indicated Appellant presented a defensive style response about his own interest in sex and had a “really high level of denial related to past sexual interest or urges and things that might be considered deviant.” Appellant’s responses suggested Appellant tried to paint himself in an overly positive light with an unwillingness to disclose minor faults in himself. On one test, Appellant disclosed that from the age of 27-34, he engaged in child molestation three times with three different victims he identified as female neighbors or

acquaintances under the age of five and between the ages of six and thirteen. When Dr. Gottfried discussed the test results with Appellant, he agreed with the results, but noted he had a fourth victim (the four-year-old victim). (TT, pp. 215-217; R., pp. 211-213).

The test responses indicated Appellant placed responsibility for his conduct on having too much alcohol or drugs and his use of pornography. The tests also noted Appellant likely lacks sexual interests in adult women. Further Appellant indicated he knew it was wrong to engage in sexual activity with underage people, but attempted to explain away his conduct by indicating he was messed up, and then minimize his behavior by indicting he did not plan the actions and did not know how the sexual things happened. (TT, pp. 217-218, 224-225; R., pp. 213-214, 220-221).

After Judge Kelly affirmed his pre-trial ruling regarding the reliability and admissibility of the PPG test, Dr. Gottfried testified about the PPG test generally, research regarding the utility of the PPG test in psychosexual evaluations, and the protocols MUSC utilized for all PPG tests. (TT, pp. 221, 226-237; R., pp. 217, 222-233). As to Appellant's PPG test, Dr. Gottfried stated "his results were right in line with his offenses," "he had clinically significant sexual arousal to trials featuring sexual activity with a female infant, a preschool-aged female child, and a grammar school or elementary school-aged child," which "were really consistent with his offense behaviors." (TT, pp. 237-239; R., pp. 233-235).

Dr. Gottfried diagnosed Appellant with pedophilic disorder, exclusive type, sexually aroused to female prepubescent children, and explained the basis for her diagnosis. (TT, pp. 239-246; R., pp. 235-242). She then testified about actuarial risk assessments she completed, the Static-99R and the Static-2002R, and Appellant's scores on both assessments were in the average risk category when compared to other known sex offenders. She further testified the assessments are based only on known reoffenders and studies indicate only up to 30% of sex offenses are reported,

so the assessments potentially underestimate a particular individual's risk to reoffend. (TT, pp. 246-253; R., pp. 242-249).

Dr. Gottfried testified she found Appellant had multiple dynamic risk factors for sexually reoffending, including sexual deviation, sexual health problems, preoccupation with sex and pornography, relationship problems, chronic sexual offending, extreme minimization or denial of sex offending, and possible use of psychological coercion in his offenses (grooming behavior). She stated Appellant had not received any sex offender treatment even though it was offered to him while he was incarcerated, and the lack of treatment was significant because pedophilia is a chronic condition and if Appellant could control it, he would not have four victims. She further stated Appellant was able to control himself from committing other types of offenses, but repeatedly offended against prepubescent victims. (TT, pp. 253-259; R., pp. 249-255).

Dr. Gottfried testified Appellant had no realistic strategies to manage his condition in the future, and nothing indicated he was going to be able to stop himself from reoffending. The future plans Appellant discussed with Dr. Gottfried included living with his parents, working with a pastor on rehabilitation and spiritual growth, and using the pastor for accountability, counseling and support. Dr. Gottfried stated Appellant had family and community support while he was offending, so he had no new support system in place that might mitigate his risk. Her opinion to a reasonable degree of psychological certainty was Appellant had the mental abnormality of pedophilic disorder that made him likely to reoffend sexually if not confined for long term control, care and treatment. (TT, pp. 259-265; R., p. 255-261).

DMH Evaluator

Christopher Gillen, Psy.D, a DMH psychologist, was qualified as an expert in clinical forensic psychology, and testified DMH assigned him to conduct Appellant's initial evaluation.

He also diagnosed Appellant with pedophilic disorder based on his criminal offense history. In addition to reviewing records regarding Appellant's criminal history, Dr. Gillen reviewed records from Appellant's incarceration, and used the same actuarial risk assessment tools Dr. Gottfried used, which placed Appellant in the average risk category. While acknowledging Appellant had dynamic risk factors for reoffending, Dr. Gillen concluded the risk factors could be targeted in treatment and Appellant had a support system to help him, so he did not need to be confined for treatment of his pedophilic disorder. (TT, pp. 303-325; R., pp. 299-321).

On cross-examination, Dr. Gillen testified he found Appellant has at least four dynamic risk factors not accounted for by the actuarial risk assessment tools, which included sexual attraction to prepubescent children, lack of emotionally intimate relationships with adults, emotional congruence with children, and offense supportive attitudes. When Dr. Gillen interviewed him, Appellant denied his pedophilic interests "were an ongoing area of need - - or an ongoing area of concern for him," but Dr. Gillen testified pedophilic disorder is a chronic condition and he believed Appellant "will always be attracted to children for the rest of his life." Dr. Gillen ultimately concluded that despite Appellant's dynamic risk factors and history suggesting he has serious difficulty controlling his sexual deviance, Appellant did not meet the criteria for civil commitment under the SVPA. (TT, pp. 325-344; R., pp. 321-340).

In closing, the State argued Dr. Gottfried's evaluation was more thorough than Dr. Gillen's evaluation, and Dr. Gottfried had more information on which to base an informed decision. The State pointed out that both experts diagnosed Appellant with pedophilic disorder. Appellant also told both experts he did not currently have sexual interest in children, but the PPG test confirmed the diagnosis and showed Appellant did have ongoing sexual interests in children. The State then went over all Appellant's dynamic risk factors for reoffending that both experts identified, and the

additional risk factors Dr. Gottfried identified based on all the additional testing and information she gathered. (TT, pp. 360-376, 389-393; R., pp. 356-372, 385-389).

The jury found Appellant is a sexually violent predator beyond a reasonable doubt, and Judge Kelly ordered that he be committed to DMH custody for long term control, care and treatment. (TT, pp. 410-411, Order of Commitment filed March 16, 2022; R., pp. 406-407, 520). This appeal followed.

STANDARD OF REVIEW

“The admission or exclusion of evidence is a matter within the trial court’s sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a manifest abuse of discretion accompanied by probable prejudice.” State v. Jackson, 384 S.C. 29, 681 S.E.2d 17, 19 (Ct. App. 2009). ““The qualification of an expert witness and the admissibility of the expert’s testimony are matters within the trial court’s sound discretion.”” State v. Prather, 429 S.C. 583, 840 S.E.2d 551, 559 (2020) (*quoting* State v. Chavis, 412 S.C. 101, 771 S.E.2d 336, 338 [2015]). “A trial court’s decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion,” which “occurs when the conclusions of the [trial] court are either controlled by an error of law or are based on unsupported factual conclusions.”” *Id.* (alteration in original).

Appellate courts review Rule 403 rulings pursuant to an abuse of discretion standard and give great deference to the trial court. Lee v. Bunch, 373 S.C. 654, 647 S.E.2d 197, 199 (2007). A trial court’s decision regarding the comparative probative value and prejudicial effect of evidence should only be reversed in exceptional circumstances. Johnson v. Horry County Solid Waste Auth., 389 S.C. 528, 698 S.E.2d 835, 838 (Ct. App. 2010).

ARGUMENT

Judge Kelly did not abuse his discretion in admitting evidence regarding a penile plethysmograph performed by the State's expert which she used in formulating her opinion, because the evidence established penile plethysmography is recognized and accepted in the field of sex offender evaluation and treatment as a reliable, objective measure of deviant sexual interests.

Appellant contends Judge Kelly erred in admitting Dr. Gottfried's testimony regarding the PPG test conducted as part of her comprehensive psychosexual evaluation of Appellant's mental status and risk to reoffend, asserting there was no evidence the PPG test is reliable, and its admission was more prejudicial than probative. As support, Appellant primarily relies on dicta from In re Bilton, 432 S.C. 157, 851 S.E.2d 442 (Ct. App. 2020), while ignoring virtually undisputed evidence before Judge Kelly regarding the research and acceptance of the PPG test. He also presents an extremely truncated and misleading summation of Dr. Gottfried's testimony.¹

In considering the admissibility of scientific evidence, the court looks at several factors, including: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures. State v. Jones, 343 S.C. 562, 541 S.E.2d 813, 819 (2001). This type of evidence is also subject to attack for relevancy and prejudice, and once the evidence is admitted, the jury may give it such weight as it deems appropriate. Council, 515 S.E.2d at 517-518.

¹Appellant repeatedly attempts to denigrate Dr. Gottfried's undisputed testimony by describing it as "vague" and "conclusory." These descriptions ignore the substance and context of her testimony in its entirety, which Judge Kelly clearly and properly did in reaching his decision. Dr. Gottfried's actual **extensive** pre-trial testimony is summarized above with direct citations to the testimony transcript.

A. PPG Testing Reliability

In this case, Judge Kelly heard extensive testimony from Dr. Gottfried regarding PPG testing reliability, including current and on-going research, peer reviewed articles, and training on the operation of the PPG test system and interpretation of PPG test results.² Dr. Gottfried testified based on her first-hand training and experience, multiple research studies and publications regarding the reliability of the PPG test, the DSM-5 reference to the PPG test, and Dr. Gottfried's active participation in on-going national and international studies and scientific presentations regarding PPG testing in general and the RCV stimulus set in particular. She testified in depth regarding the SBCL protocols and quality control procedures used in every PPG test the lab conducts. She stated the PPG test research has been increasing, and a 2019 "best practices" book specifically about sexually violent predator evaluations includes a chapter discussing the utility of PPG testing in such evaluations.

Notwithstanding the Bilton dicta claiming near uniformity of other jurisdictions excluding the PPG test, courts have recognized the general acceptance and admissibility of the PPG test in sexually violent predator cases.³ In In re Detention of Halgren, 156 Wash. 2d, 132 P.3d 714 (2006), the Washington Supreme Court found PPG test results were admissible as part of the diagnostic process, and the PPG test testimony would assist the jury in understanding the expert's

²Appellant's assertion that "esoteric" and "junk science" "are both accurate descriptions of PPG testing" ignores all the legitimate scientific research Dr. Gottfried cited that support the reliability and utility of PPG testing, as well as approval of the PPG test as a legitimate medical test by government agencies and insurance companies (discussed below).

³This includes South Carolina circuit courts. See In re Care and Treatment of Gregg, 2018-CP-10-03472 (Jefferson, J.)(*rev'd* August 10, 2022; Petition for Writ of Certiorari filed December 7, 2022); In re Care and Treatment of Williford, 2019-CP-04-01380 (Sprouse, J.) (appeal pending).; In re Care and Treatment of Hyman, 2020-CP-21-1045 (Henderson, J.) (appeal pending).

sexual deviancy diagnosis.⁴ *Id.* at 719. The court further found the issue of the PPG test's reliability goes to the weight of the evidence rather than its admissibility.⁵ *Id.*; *see also In re Detention of Herrick*, 198 Wash. App. 439, 393 P.3d 879, 885 (2017) (PPG testing may provide critical information to an evaluator in determining if alleged sexual predator has a mental abnormality, and PPG testing is an effective and generally accepted method for evaluating sex offenders).

The Illinois appellate court also found PPG test evidence was admissible in *In re Commitment of Sandry*, 367 Ill.App.3d 949, 858 N.E.2d 295 (2006). As to the admissibility of a particular test or methodology, the court stated: "once it is determined that a methodology is generally accepted, it follows that it has achieved a sufficient degree of reliability and validity to cross the threshold of admissibility." *Id.* at 309. The court then engaged in an exhaustive analysis of case law (use of PPG mentioned in at least 21 states, including South Carolina), statutes (eleven state statutes) and regulations. *Id.* at 310-313.

The *Sandry* court also discussed numerous academic articles, which it determined provided ample support "to conclude that PPG testing is accepted by a substantial number of experts in this field such that it may be used to support a qualitative assessment of the future dangerousness of an individual." *Id.* at 309-316 (emphasis added). Acknowledging some experts have criticized and

⁴Significantly, Washington's sexual predator statute expressly gives the courts the discretion to order the person to comply with a PPG test if requested by the evaluator. RCW §71.09.050(1). Thus, the Washington legislature recognized the PPG test is a valuable tool that should be available to evaluators if they believe it is necessary, and the Washington courts have found it to be reliable.

⁵The *Bilton* court dismissed *Halgren* as distinguishable because the Washington court found the PPG test was not novel and subject to the test for scientific evidence. This ignored the expressly stated reason for the Washington court's finding, which was that the PPG test had been analyzed in a previous case and found to be an effective method for assessing and treating sex offenders. 132 P.3d at 719.

rejected PPG testing, the court noted the existence of contrary authority is not dispositive because many people could disagree on the acceptance of any given methodology, but those who accept it may still constitute a significant subset of experts in any given field. *Id.* at 316; *see also State v. Graham*, 275 Kan. 176, 183, 61 P.3d 662, 667 (2003) (some disagreement in the scientific and medical community as to the reliability of a particular test method is a matter affecting the weight of such evidence and not its admissibility; such evidence is admissible if a qualified expert witness testifies the particular test method is reliable and accurate, and it is generally accepted as such by other experts in the field).

The Bilton court distinguished Sandry on the premise that “Illinois courts do not examine reliability before scientific evidence is admitted,” and did not even address all the case law and research articles discussed in Sandry. 432 S.E.2d at 446. As with its dismissal of Halgren, the court’s conclusion that Illinois courts do not examine reliability ignored a very significant part of the Sandry opinion, which analyzed Illinois case law expressly stating “[t]he determination of the reliability of an expert’s methodology is naturally subsumed by the inquiry into its general acceptance in the scientific community.” 857 N.E.2d at 308 (*quoting Donaldson v. Central Illinois Public Service Co.*, 767 N.E.2d 314 [2002])(emphasis added). Thus, in examining whether the PPG test is generally accepted in the scientific community, the Sandry court necessarily considered “reliability,” and its discussion of evidence indicating the PPG test is reliable and generally accepted is directly relevant here.⁶

⁶The Bilton court also cited a concurring opinion in United States v. Weber, 451 F.3d 552 (9th Cir. 2006) for the proposition that the PPG test is “Orwellian when, **as here**, the State compels the subject to arouse himself sexually and then forces him to view deviant stimulants.” 851 S.E.2d at 444 (emphasis added). This statement is misleading. There was no evidence in Bilton, and there is no evidence in this case, that MUSC requires the person to “arouse himself sexually” before beginning the test. To the contrary, Dr. Gottfried expressly testified MUSC’s protocols do not include any masturbation requirement. (TT, p. 31; R., p. 27).

There is ample evidence the PPG test is widely researched and generally accepted. *See* Golde, J.A., et. al., Psychophysiologic Assessment of Erectile Response and Its Suppression as a Function of Stimulus Media and Previous Experience with Plethysmography, *Journal of Sex Research*, 37(1), 53–59 (2000); Letourneau, E.J., A Comparison of Objective Measures of Sexual Arousal and Interest: Visual Reaction Time and Penile Plethysmography, *Sex Abuse* 14(3), 207–23 (July 2002); Kalmus, Beech, Forensic Assessment of Sexual Interest: A Review, *Aggression and Violent Behavior*. Vol. 10 Issue 2, pp. 193–217 (2005); Stinson, J.D., Becker, J.V., Assessing Sexual Deviance: A Comparison of Physiological, Historical, and Self-Report Measures. *J. Psychiatric Practice*, 14(6):379-88 (Nov. 2008); Howes, R.J., Measurement of Risk of Sexual Violence Through Phallometric Testing, *Leg Med (Tokyo)* 11 Suppl 1:S368-369 (April 2009); Marshall W. L., Phallometric Assessments of Sexual Interests: An Update, *Current Psychiatry Rep.* 16(1):428 (Jan. 2014); Burke, W. & Murphy L., International Collaboration: The Development of the Real Child Voices Stimulus Set, Keynote Address – International Academy of Sex Research Annual Meeting (July 2017); Plaud, J.J., The Use of Penile Plethysmography in SVP Assessment and Treatment Decision Making, *Sexually Violent Predators: A Clinical Science Handbook* 243-254 (O'Donohue & Bromberg (eds.) (2019); Gottfried, E., Use of Penile Plethysmography in Evaluations with Individuals Who Commit Sex Offenses, South Carolina Chapter of the Association for the Treatment of Sexual Abusers Annual Conference Presentation (March 2019); McPhail, I.V., et al., Validity in Phallometric Testing for Sexual Interests in Children: A Meta-Analytic Review, *Assessment* 26(3) 535-552 (2019); Murphy, L., Bradford, J. M., & Fedoroff, J. P., Laboratory Measurement of Penile Response in the Assessment of Sexual Interest, *Sex Offenders: Identification, Risk Assessment, Treatment, and Legal Issues*, 159 (2021); Gottfried, E., et. al., Examining Relationships Between PPG Stimuli and a Visual Reaction Test

of Sexual Interest, 40th Annual Research and Treatment Conference of the Association for the Treatment of Sexual Abusers Presentation (September 2021).

The PPG test “is a widely recognized means of measuring male sexual arousal to given stimuli,” and “has become a standard objective measure of arousal and is considered by some researchers and clinicians to be essential in the assessment and treatment of male sex offenders and men with paraphilic interests.” Murphy, L., *et. al.*, Standardization of Penile Plethysmography in Assessment of Problematic Sexual Interests, J. Sex. Med. 12(9): 1853-1861 (2015); *see also* Murphy, L., *et. al.*, Assessment of Problematic Sexual Interests with the Penile Plethysmograph: an Overview of Assessment Laboratories, Current Psychiatry Reports 17(5):567 (2015) (PPG test “is an objective assessment of sexual arousal based on the change in penis circumference and volume due to increased vasocongestion in the penis”); Howes R. J. & Howes, S. E., Sexual Arousal as a Function of Stimulus Mode: Implications for Phallometric Assessment, J. Forensic Res. 8(6):398 (2017) (PPG test is “[p]erhaps the best means of objectively measuring deviant sexual interest”). While some controversy regarding PPG testing remains, as the Sandry court noted, the existence of contrary authority is not dispositive.⁷

In addition to numerous studies, articles and peer reviewed presentations indicating the PPG test is reliable and generally accepted, the PPG test has undergone Federal Drug Administration (FDA) review, and the FDA has approved several PPG systems, including the Limestone system used in this case.⁸ In addition, the Medicaid/Medicare regulations provide

⁷Indeed, DNA evidence has been widely accepted for years, but its admission is still challenged. *See State v. Phillips*, 430 S.C. 319, 844 S.E.2d 651 (2020) (evidence regarding “touch DNA” was inadmissible).

⁸*See* https://www.accessdata.fda.gov/cdrh_docs/pdf5/K052929.pdf (501(k) Summary – Limestone Technologies, Inc.)

coverage for PPG tests.⁹ Major insurance companies, such as Blue Cross Blue Shield, also recognize the PPG test as a medical procedure, and either provide limited coverage or exclude it from coverage.¹⁰ The federal government's and insurance companies' recognition of the PPG test as a valid medical procedure amply demonstrates its general acceptance in the health care community.

As Dr. Gottfried testified, further evidence of the PPG test's general acceptance in the mental health community is the reference to it in the DSM-5, which provides:

Psychophysiological measures of sexual interest may sometimes be useful when an individual's history suggest the possible presence of pedophilic disorder but the individual denies strong or preferential attraction to children. **The most thoroughly researched and longest used of such measures is penile plethysmography**, although sensitivity and specificity of diagnosis may vary from one site to another.

DSM-5-R 699 (emphasis added). While previous DSM versions did not recognize the PPG test at all, by the time the DSM-5 was published in 2013, there was sufficient research indicating the PPG test's validity as a tool to measure an individual's sexual interest.¹¹

In psychosexual behavior evaluations, the PPG test provides data useful in determining an individual's level of risk to commit acts of sexual aggression by measuring the extent to which the individual is dominated by sexual arousal to deviant stimuli, and predictions of risk to re-

⁹See Federal Register Volume 72, Number 61, Addendum III and Addendum V (Friday, March 30, 2007) (<https://www.gpo.gov/fdsys/pkg/FR-2007-03-30/html/07-1414.htm>).

¹⁰The PPG test is not just utilized in psychosexual evaluations and/or treatment, but used in general medical health care as well. See Blue Cross Blue Shield of Texas, Treatment of Male Sexual Dysfunction, Special Comment on Contract Exclusions (January 7, 2003) (<https://www.bcbstx.com/provider/pdf/medicalpolicies/surgery/717-010.pdf>).

¹¹Published in February 2022, the DSM-5-TR contains the same language on page 795, but adds that sites "frequently use different stimuli, procedures and scoring." As discussed above, however, the Limestone system used by MUSC has standardized protocols and procedures utilized in between fifty and one hundred labs across the country and internationally, and MUSC intentionally uses a cut score double the cut score recommended in the research literature to minimize the possibility of false positive results.

offend “are rendered much more accurate by the inclusion of data from this technique.” Howes, R. J., Measurement of Risk of Sexual Violence Through Phallometric Testing, Legal Medicine 11:368-369 (2009). “Although not universally embraced, there nonetheless remains widespread acceptance and recognition of the value of phallometric assessment,” and it “is certainly an assessment procedure which has come a long way since it was first devised.” Howes & Howes, *supra* (emphasis added). *See also* Tong, Dean, The Penile Plethysmograph, Abel Assessment for Sexual Interest, and MSI-II: Are They Speaking the Same Language? 35 Am. J. of Fam. Therapy, 187, 190 (2007) (“The PPG, when administered properly, represents a direct and objective measurement of a man's level of sexual arousal to normal versus sexualized stimuli. Since there is a strong relationship between an individual's pattern of sexual arousal and the probability that he may or will act upon that arousal, an important first step in gauging one's propensity to sexual deviancy is to obtain an accurate assessment of that person's sexual arousal patterns, which is precisely what the PPG does.”)(emphasis added); Peters, James M., Assessment and Treatment of Sex Offenders: What Attorneys Need to Know, Advocate, 23 (Dec. 1999) (PPG test “is invaluable in the evaluation, treatment and management of known sexual offenders.”)(emphasis added).

Judge Kelly’s findings regarding the reliability of the PPG test and the admissibility of evidence regarding Appellant’s PPG test results are amply supported by the record. Dr. Gottfried considered the PPG test results as a single data point in a multi-faceted psychosexual evaluation, and without focusing on the PPG test, she testified about **all** the tests and information she considered in reaching her opinions regarding Appellant’s pedophilic disorder diagnosis and his risk to reoffend sexually if not confined for long term control, care and treatment.

B. Probative/Prejudice

Relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. “Although relevant, evidence may be excluded if its probative value is **substantially** outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 403, SCRE (emphasis added).

Appellant makes the conclusory argument that even if the PPG test evidence had probative value, it was outweighed by the danger of unfair prejudice to him. The PPG test results were no doubt prejudicial to Appellant, but they were consistent with his history of sexually offending against children, and Dr. Gottfried testified the PPG test was only one data point in her evaluation.

Appellant has a documented history of sexually offending against four prepubescent females. Results from psychological tests Dr. Gottfried administered as part of Appellant’s psychosexual evaluation indicated Appellant may try to present himself in a better light, and not be forthcoming about his sexual interests. Consistent with that indication, when Dr. Gottfried confronted Appellant about his reported offenses and his test results, he claimed his conduct was related to his use of Ambien, and he could not recall or refute the allegations.

The SVPA created a civil process for assessing potential sexually violent offenders. It is not punitive in nature but is intended “to: (1) meet the special needs of sexually violent predators; (2) address the significant likelihood that they will engage in repeated acts of sexual violence if not treated for their mental conditions; and (3) assess the risks requiring their involuntary civil commitment in a secure facility for long-term control, care, and treatment.” In re Care and Treatment of Brown, 372 S.C. 611, 643 S.E.2d 118, 121 (Ct. App.2007) (citing S.C. Code Ann.

§44–48–20). A “‘person's dangerous propensities are the focus of the SVP Act.’” In re Care & Treatment of Ettel, 377 S.C. 558, 660 S.E.2d 285, 287 (Ct. App. 2008) (*quoting In re Care and Treatment of Corley*, 353 S.C. 202, 577 S.E.2d 451, 453 [2003]).

In SVPA actions, the State is required to prove beyond a reasonable doubt the person presently suffers from a mental abnormality or personality disorder that makes him likely to engage in future acts of sexual violence if not confined for treatment. *See In re Care and Treatment of Taft*, 413 S.C. 16, 774 S.E.2d 462, 466 (2015) (the State must prove beyond a reasonable doubt that the person is presently a sexually violent predator). Considering the State’s significant burden of proof, any reliable test or assessment tool used by an expert in assessing the person’s mental status and risk to reoffend, including the PPG test, should be submitted for the jury’s consideration in accessing the expert’s methodology and ultimate opinions. An expert is always subject to cross-examination about any test or assessment on which the expert relied in forming relevant opinions.

In this case, both experts diagnosed Appellant with pedophilic disorder (deviant sexual interest in prepubescent children). In light of that undisputed diagnosis, the jury had to determine if Appellant had the propensity to offend sexually against children in the future if not confined for treatment.

In the face of Appellant’s contention he no longer had sexual interest in children, the PPG test results indicated Appellant’s well-established history of sexual arousal to prepubescent children continued, which was highly relevant to the jury’s determination of whether Appellant was presently likely to offend sexually against children in the future if not confined for treatment for his pedophilic disorder. Dr. Gottfried testified about all the data she considered in her evaluation, which included Appellant’s history of offending against prepubescent children,

information from the psychological tests she administered, the PPG test results, and information gathered during Appellant's interview.

The State briefly referenced the PPG test during closing argument as only one data point in Appellant's comprehensive psychosexual evaluation that confirmed Dr. Gottfried's diagnosis and risk assessment. Instead, the State focused on the thoroughness of Dr. Gottfried's evaluation as opposed to the DMH evaluator's evaluation.

When viewed in light of the issues before the jury and the entire record, the prejudice to Appellant arising from the PPG test evidence did not substantially outweigh the evidence's probative value. The evidence presented amply supports Judge Kelly's findings regarding the PPG test as well as the jury's verdict that Appellant is a sexually violent predator as defined by the SVPA, and the verdict should be affirmed.

CONCLUSION

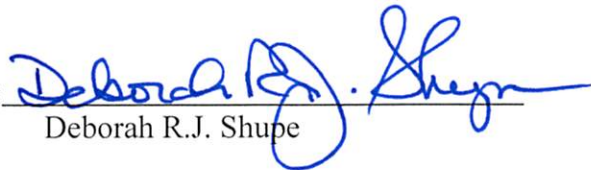
Based on the foregoing, the State respectfully submits Appellant's civil commitment pursuant to the SVPA should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

April 4, 2023

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case No. 2022-000371

IN THE MATTER OF THE CARE AND TREATMENT
OF SHAWN TORLIF DAILY,

APPELLANT

CERTIFICATE OF CONNSEL

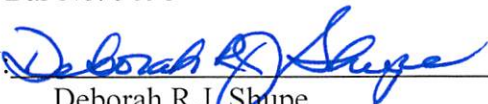
The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR and the April 15, 2014, Order from the South Carolina Supreme Court entitled, "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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ATTORNEYS FOR RESPONDENT

April 3, 2023

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case No. 2022-000371

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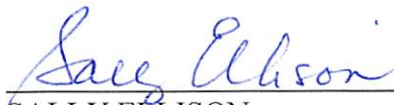
APPELLANT

PROOF OF SERVICE

I, Sally Ellison, certify I served the Final Brief of Respondent on Appellant by email to the Appellant's counsel at the address reflected in the AIS system. The Final Brief of Respondent has also been filed with the Court of Appeals through the AIS system.

I further certify that all parties required by Rule to be served have been served.

This 4th day of April, 2023.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

In the Matter of the Care and Treatment of Shawn Torlif
Daily, Appellant.

Appellate Case No. 2022-000371

Appeal From Spartanburg County
R. Keith Kelly, Circuit Court Judge

Opinion No. 6061
Submitted May 1, 2024 – Filed June 12, 2024

REVERSED AND REMANDED

Appellate Defender Lara Mary Caudy, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Deborah R.J. Shupe,
both of Columbia, for Respondent.

PER CURIAM: Shawn Torlif Daily appeals his involuntary commitment under the Sexually Violent Predator Act (the SVP Act),¹ arguing the circuit court erred in admitting evidence of the results of a penile plethysmograph (PPG) test he underwent because the evidence was unreliable. We reverse and remand.

FACTS

Daily pled guilty to three counts of lewd act on a minor. Prior to his release, the State petitioned the circuit court to order Daily's evaluation under the SVP Act.

¹ S.C. Code Ann. §§ 44-48-10 to 44-48-180 (Supp. 2023).

After a probable cause hearing, the court ordered evaluation and appointed Dr. Christopher Gillen, a psychologist with the Department of Mental Health, to evaluate Daily. Dr. Gillen issued an evaluation, finding Daily did not meet the criteria for commitment under the SVP Act. The State sought the independent evaluation of Dr. Emily Gottfried of the Medical University of South Carolina (MUSC). Dr. Gottfried's evaluation included PPG testing. After Dr. Gottfried's evaluation, Daily filed a pretrial motion to suppress testimony related to the PPG testing and results. The State filed a memorandum in opposition to the motion to suppress.

At a pretrial hearing, Daily argued the PPG test was not scientifically reliable, it was useful for treatment but not evaluation, Daily faced contempt if he did not submit to the test, and it was not relevant. Daily further asserted the probative value of the evidence was substantially outweighed by its prejudicial effect. The State argued the test was reliable, the results were only one factor Dr. Gottfried relied on, and the prejudicial effect did not outweigh the probative value. The State proffered Dr. Gottfried's testimony.

Dr. Gottfried testified the PPG has been widely used since 1950, not only regarding sexual offending but also to address erectile dysfunction and general sexual wellbeing. She explained she and everyone involved in the PPG test at the Sexual Behaviors Clinic and Lab (SBCL) at MUSC were clinically certified to perform and interpret the test, and the SBCL had been certified by the manufacturer of the PPG, Limestone Technologies. In addition, she testified all equipment used was calibrated three times before each test and measures were taken to make sure each administration of the test was valid.

Dr. Gottfried also testified the Association for the Treatment of Sexual Abusers (ATSA) published guidelines for assessment and treatment purposes, including the use of the PPG. She opined the ATSA concluded the PPG was standardized and empirically supported, but it should not be used alone in concluding risk or diagnosis and she noted she used it in conjunction with other evaluation methods. She explained she was part of an international standardization research group for the PPG. In addition, she had "about 36 peer-reviewed publications or book chapters in peer-reviewed scholarly books" regarding the PPG. She had performed more than fifty pre-commitment evaluations using PPGs and also contracted with U.S. Federal Probation and Pretrial Services system for evaluations. Dr. Gottfried next testified about a diagnostic manual, which recognized the use of the PPG, and a clinical science handbook that found the PPG important in the evaluation and treatment of those being considered for civil commitment as a sexual predator.

She explained a methodology of using children's voices during the stimuli tests that could be tailored to an examinee's offending pattern, Real Child Voices, and opined that SVP programs in Minnesota, California, Illinois, New York, and possibly Missouri used the methodology for treatment programs.² She testified Real Child Voices had been peer reviewed. Dr. Gottfried also used the Marshall stimulus test, which she described as "developed . . . a long time ago."³ Dr. Gottfried opined the PPG was generally accepted in the mental health and medical field. However, she admitted the PPG had standardization issues and it did not always have expected results. After taking the matter under advisement, the court denied the motion to suppress.

At trial, Dr. Gottfried was qualified by stipulation as an expert in forensic psychiatry in sexual behaviors. Dr. Gottfried testified she was certified in 2018 to administer the PPG by a psychologist at Limestone Technologies. She acknowledged "the PPG has been criticized for some standardization issues." In addition, "some offenders don't show expected arousal pattern." She explained a sexual offender against children may not show sexual arousal under the PPG because "not everybody who offends against children offends because they are sexual[ly] attracted or aroused by them"

Dr. Gottfried testified Daily's results from the PPG testing "were right in line with his offenses." According to Dr. Gottfried, Daily "had a clinically significant sexual arousal to trials featuring sexual activity with a female infant, a preschool-aged female child, and a grammar school or elementary school-aged child. And those were really consistent with his offense behaviors." She stated Daily did not show clinically significant arousal to consenting adults. Dr. Gottfried diagnosed Daily with pedophilic disorder, exclusive type, sexually aroused to female prepubescent children. She opined the disorder was treatable but difficult to treat, and she testified Daily had not had any treatment.⁴ Dr. Gottfried rated Daily in the

² Dr. Gottfried stated the jurisdictions she mentioned used the PPG "for precommitment, but when I discuss the programs, they only do treatment there."

³ The Marshall test "features a monotone male voice . . . reading sexual scenarios." The Real Child Voices is "slide plus audio," using photos of like victims, such as a female child in a bathing suit used for an examinee whose victim was a similar age and gender.

⁴ Dr. Gottfried noted Daily had not received treatment even though it was offered to him while he was incarcerated. She also noted Daily was "a person who maybe genuinely wants . . . not to reoffend, but has no idea how to manage that arousal that he has. . . . He clearly needs treatment for it."

average-risk range for reoffending (approximately five percent) based on the actuarial assessments given, but found he had a high risk to reoffend based on her overall review. She opined Daily met the criteria to be found a sexually violent predator under the SVP Act and that he had "a mental abnormality that ma[de] him likely to reoffend if not committed and [given] treatment."

Dr. Gillen was qualified without objection as an expert in clinical forensic psychology and testified he diagnosed Daily with pedophilic disorder. His actuarial assessments also measured Daily in the average risk to reoffend of less than five percent. He testified there is no cure for pedophilic disorder but explained it could be treated by teaching strategies to manage deviant arousal to prevent reoffending. Dr. Gillen testified that once Daily was released, he would have approximately three years remaining on probation, which would include intensive supervision, sex offender treatment, and GPS monitoring. Dr. Gillen opined Daily was not likely to reoffend. The jury found Daily was a sexually violent predator under the SVP Act, and the circuit court ordered his commitment. This appeal followed.

STANDARD OF REVIEW

In *Matter of Bilton*, this court described the standard of review for evidentiary rulings in an SVP case:

The standard of review for evidentiary rulings is very deferential. "The admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a 'manifest abuse of discretion accompanied by probable prejudice.'" *State v. Commander*, 396 S.C. 254, 262–63, 721 S.E.2d 413, 417 (2011) (quoting *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 848 (2006)). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

432 S.C. 157, 161–62, 851 S.E.2d 442, 444 (Ct. App. 2020). In addition, "[a] trial [court's] decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." *State v.*

Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014) (quoting *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003)).

LAW/ANALYSIS

Daily argues the circuit court erred in admitting evidence of the PPG test because it was unreliable and the probative value of the evidence was substantially outweighed by the danger of unfair prejudice. We agree.

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE. "To admit expert testimony under Rule 702, the proponent . . . must demonstrate, and the trial court must find, the existence of three elements: 'the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable.'" *State v. Wallace*, 440 S.C. 537, 544, 892 S.E.2d 310, 313 (2023) (quoting *State v. Council*, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999)). A trial court considers these factors in determining the admissibility of scientific evidence: "(1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures." *Council*, 335 S.C. at 19, 515 S.E.2d at 517.

We recognize there may be contrary authority finding the PPG is reliable and probative. See *In re Det. of Herrick*, 393 P.3d 879, 885 (Wash. Ct. App. 2017) (affirming the use of the PPG as a diagnostic test in a commitment proceeding, stating the Washington Supreme Court had accepted the PPG as used for diagnosis and the Washington legislature had "expressly authorized the use of PPG testing as part of the evaluative process"); *In re Commitment of Sandry*, 857 N.E.2d 295, 309 (Ill. Ct. App. 2006) (stating "a significant subset of experts considers PPG testing a useful tool for treating and evaluating sex offenders").

However, we agree with this court's opinion in *Matter of Bilton*, which noted "[t]he test is controversial and has been criticized for a lack of standardization and for being subject to manipulation." 432 S.C. 157, 162, 851 S.E.2d 442, 444 (Ct. App. 2020). Furthermore, our court in *Bilton* stated, "[c]ourts have noted that PPGs are routinely used as a tool in treatment programs[, and] . . . with limited exceptions[, . . .] courts have 'uniformly' declared that PPG test results are 'inadmissible as evidence because there are no accepted standards for this test in the scientific

community." *Id.* at 162–63, 851 S.E.2d at 444 (quoting *Doe ex rel. Rudy-Glanzer v. Glanzer*, 232 F.3d 1258, 1266 (9th Cir. 2000)); *see also Berthiaume v. Caron*, 142 F.3d 12, 17 (1st Cir. 1998) ("[The PPG] is widely used in the scientific community for the treatment of pedophilia; its use for screening is debatable and the scientific community is not of one mind . . ."); *United States v. Powers*, 59 F.3d 1460, 1471 (4th Cir. 1995) (affirming the district court's ruling that the PPG test fails the "scientific validity" prong of the test which provides the standard for the admissibility of such scientific evidence); *Leftwich v. State*, 538 S.E.2d 779, 781 (Ga. Ct. App. 2000) (finding the court had already "noted that the reliability of test results obtained on the penile plethysmograph had not been scientifically established" and the proponent of the evidence also failed to demonstrate the evidence was outside of the knowledge of the average juror); *State v. Spencer*, 459 S.E.2d 812, 815 (N.C. Ct. App. 1995) (affirming the exclusion of the results of a PPG test because "the evidence before [the trial court] by no means established the reliability of the plethysmograph; there is a substantial difference of opinion within the scientific community regarding the plethysmograph's reliability to measure sexual deviancy"); *see generally* Renee Sorrentino, M.D., *Sex Offenders and the Law*, 39 Vt. B.J. 26, 26 (2013) ("Studies measuring sexual arousal by penile plethysmography (circumferential measurement of penile tumescence as a measure of sexual arousal) define improvement as a reduction in deviant sexual arousal. . . . However, the use of penile plethysmography is not widely accepted by the scientific community because of the lack of reliability between the different types and models of plethysmography in addition to debate over the validity and appropriate use of penile plethysmography.") (footnotes omitted); Major Christopher Mathews, et al., *Debunking Penile Plethysmograph Evidence*, 28 NO. 2 The Reporter 11, 11–12 (2001) (stating "the use of the penile plethysmograph as a predictive or forensic tool fails to meet the relevant legal standards for admissibility and has been repeatedly rejected by the scientific community"); *id.* at 13 (stating due to "the serious issues undermining [the] reliability" of the PPG, "it is not surprising that state courts have repeatedly excluded penile plethysmograph evidence. Federal courts have likewise rejected the test.") (footnote omitted); Myers, et al., *Expert Testimony in Child Sexual Abuse Litigation*, 68 Neb. L. Rev. 1, 134–35 (1989) (stating that a problem with the reliability of PPG testing is that penile response is subject to voluntary control, and the test should not be used to determine whether or not an individual has engaged in deviant behavior). Because we find the PPG is not reliable, as required by Rule 702, we find the trial court abused its discretion in admitting the PPG test results.

Having found error in the admission of the PPG, we must next consider whether it was prejudicial or constituted harmless error. "A fundamental principle of

appellate procedure is that a challenged decision must be both erroneous and prejudicial to warrant reversal." *In re Gonzalez*, 409 S.C. 621, 636, 763 S.E.2d 210, 217 (2014). "A harmless error, by definition, is an error that is not prejudicial." *State v. Charping*, 313 S.C. 147, 159, 437 S.E.2d 88, 95 (1993) (Goolsby, A.J., concurring), *overruled on other grounds by Franklin v. Catoe*, 346 S.C. 563, 552 S.E.2d 718 (2001). "Whether an error is harmless depends on the circumstances of the particular case. No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." *In re Care & Treatment of Harvey*, 355 S.C. 53, 62–63, 584 S.E.2d 893, 897 (2003) (quoting *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985)).

Here, Dr. Gottfried testified she met with Daily twice and her technicians met with him on two other occasions; she evaluated his criminal history, his incarceration, and other records; and she reviewed Dr. Gillen's evaluation. She performed three categories of assessments: self-reporting; the PPG; and her own clinician scores. According to Dr. Gottfried, Daily's self-reporting was defensive, exhibiting "a really high level of denial related to past sexual interest or urges and things that might be considered deviant." He also "placed responsibility for his behavior on having had too much alcohol or drugs [Ambien]." Dr. Gottfried testified Daily attempted to minimize his behavior "by indicating that he didn't plan [his assaults], that he slipped one time, made a mistake, and he didn't know how the sexual things actually ended up happening."

However, Dr. Gottfried was also the State's sole witness and a significant portion of her testimony centered on the PPG test. She emphasized to the jury that the PPG was an "objective test of male sexual arousal" and claimed it is "really, really important to objectively know what this person is aroused by . . . [a]nd so the PPG is going to give you data about today on . . . what they were aroused by in the laboratory." She also told the jury that "the PPG has the greatest validity and reliability"

To determine if the erroneous admission of the PPG qualifies as harmless error depends on "whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict." *State v. Tapp*, 398 S.C. 376, 389–90, 728 S.E.2d 468, 475 (2012). Although Dr. Gottfried testified she did not rely exclusively on the PPG in making her evaluation, we cannot fairly say that beyond a reasonable doubt, the PPG test results did not contribute to the jury's verdict. *See Bilton*, 432 S.C. at 168, 851 S.E.2d at 447 ("Many cases recount the special solicitude juries afford

testimony that has the appearance of scientific evidence."); *id.* (finding prejudicial error in the admission of PPG test results).

CONCLUSION

For the foregoing reasons, the commitment order is reversed and remanded for a new trial.

REVERSED AND REMANDED.

THOMAS, MCDONALD, and VERDIN, JJ., concur.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case No. 2022-000371

IN THE MATTER OF THE CARE AND TREATMENT
OF SHAWN TORLIF DAILY,

APPELLANT

RESPONDENT'S PETITION FOR REHEARING

On June 12, 2024, the court reversed Appellant's civil commitment pursuant to the South Carolina Sexually Violent Predator Act (SVPA), finding error in the admission of evidence regarding the results of a penile plethysmograph (PPG) conducted in the course of Appellant's evaluation, and the error was not harmless. In re Shawn Torlif Daily, Op. No. 6061 (S.C. Ct. App. filed June 12, 2024). Pursuant to Rule 221(a), SCACR, Respondent respectfully requests that the court rehear the matter, and consider the significant points overlooked and/or misapprehended by the court as discussed below.

Rehearing is appropriate and necessary in this case because the court failed to apply the appropriate standard of review, overlooked evidence in the record, and misapprehended the law related to admissibility of expert opinions. In particular, the court's apparent *de novo* determination regarding reliability and admissibility of the PPG evidence failed to recognize, analyze, or give due deference to the findings and legal conclusions of the Honorable R. Keith Kelly regarding the

reliability of PPG testing, which he made after a full pre-trial evidentiary hearing consistent with State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001), and State v. Council, 335 S.C. 1,515 S.E.2d 508 (1999) (hereinafter Jones/Council). In reversing Judge Kelly’s ruling that the PPG was reliable, the court ignored significant, undisputed evidence regarding the PPG’s reliability and its admissibility as a factor considered by the State’s expert in formulating her opinion that Appellant meets the criteria for commitment as a sexually violent predator under South Carolina law.¹

In addition, even assuming error, the court’s harmless error analysis was fundamentally flawed. The court again focused on very limited testimony regarding the PPG evidence without considering that evidence in context and in relation to the entirety of the evidence as required by well-established South Carolina case law.

ARGUMENT

A. The court failed to apply the required and appropriate standard of review.

The admission or exclusion of evidence is a matter within the trial court’s sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing the trial court’s rulings were based on an error of law or were unsupported by evidence in the record. State v. Prather, 429 S.C. 583, 840 S.E.2d 551, 559 (2020); State v. Jackson, 384 S.C. 29, 681 S.E.2d 17, 19 (Ct. App. 2009); *see also* State v. Davis-Kocsis, Op. No. 28213, 2024 WL 3169855 at *3, n. 2 (S.C. Sup. Ct. filed June 26, 2024) (appellate court’s standard of review regarding evidentiary rulings is “simply to determine whether the trial court acted within its discretion,” and “[i]f so, we affirm”). The exercise of discretion means “the trial court—when

¹The court decided this case without oral argument, during which evidence regarding the PPG’s general reliability and acceptance could have been discussed, and the State would have been afforded an opportunity to address the court’s concerns.

ruling on the admission or exclusion of evidence—must think through the objection that has been made, the arguments of the attorneys, and the law—particularly the applicable evidentiary rules—and must thoughtfully apply the correct law to the information and evidence before it.” State v. Wallace, 440 S.C. 537, 892 S.E.2d 310, 312–13 (2023) (*citing* Morris v. BB&T Corp., 438 S.C. 582, 885 S.E.2d 394, 397 [2023]).

The trial court’s recognition of its responsibility to exercise discretion will be apparent when the record indicates the court followed such a thought process; and when a trial court’s thought process of applying sound principles of law to the court’s view of the facts and circumstances is evident in the record of proceedings in a hearing, in a written order, or otherwise, the appellate court will defer to the trial court’s exercise of discretion, even when the judges on the appellate court might have made the decision differently.

Morris at 397. Trial courts are tasked only with determining whether the basis for the expert’s opinion is sufficiently reliable such that it may be offered into evidence, and vigorous cross examination, presentation of contrary evidence and careful instructions on the burden of proof are the traditional appropriate means of attacking admissible evidence. In re Matter of Ridley, 433 S.C. 316, 858 S.E.2d 165, 168-169 (Ct. App. 2021).

Even though the court cited the appropriate abuse of discretion standard of review, it reversed Judge Kelly’s conclusions with **no analysis** of the evidence before him, much less his detailed findings on each Jones/Council factor with references to the specific evidence on which he relied.² The court did not find any of Judge Kelly’s findings and conclusions lacked evidentiary support and cited no error of law, but in a conclusory fashion, overlooked the extensive evidence before Judge Kelly regarding the reliability of the PPG, particularly in relation to the Jones/Council factors.

²Indeed, it is difficult to find anything in the court’s opinion indicating the court even read, much less considered, Judge Kelly’s analysis, findings and conclusions.

It is clear from the record that Judge Kelly recognized his responsibility to exercise his discretion regarding admissibility of PPG evidence, and he meaningfully engaged in exactly the deliberative process described in Wallace and Morris.³ Rather than fully analyze the evidence and Judge Kelly's findings, the court focused on one statement regarding standardization in Dr. Gottfried's in-depth pre-trial testimony, which it took out of context and only quoted in part. In essence, instead of applying the appropriate abuse of discretion standard of review, the court engaged in a *de novo* review and substituted its judgment for Judge Kelly's without finding abuse of discretion as to any of Judge Kelly's findings or conclusions. An appellate court's distaste for a particular scientific test or evidence is not a basis for overruling a trial court's comprehensive and well-reasoned analysis and ruling regarding the evidence's admissibility. *See Morris; Wallace; State v. Phillips*, 430 S.C. 319, 844 S.E.2d 651, 662 (2020) (appellate courts analyze the admissibility of scientific evidence for the first time when the trial court fails to meaningfully exercise its discretion).

During the pre-trial hearing, Dr. Gottfried was qualified (by stipulation) as an expert in forensic psychology as well as the field of penile plethysmography. Her PPG testimony was virtually undisputed, but the court dismissively summarized Dr. Gottfried's pre-trial testimony while ignoring the context or full content of her testimony.

Significantly, the court stated Dr. Gottfried had “‘about 36 peer-reviewed publications or book chapters in peer-reviewed scholarly books’” regarding the PPG. While the quoted language is accurate, the court took it out of context, ignoring another important part of Dr. Gottfried's testimony. She testified the PPG has been the subject of “**over a hundred**” peer reviewed studies

³The evidence before Judge Kelly and his detailed ruling regarding admissibility of PPG evidence are set forth in detail at pages 3-9 of the Brief of Respondent with citations to the record, and are incorporated herein by reference.

and publications in the general sexual health and sexual offending literature, and there had been “over sixty” professional conference presentations regarding the PPG.⁴ (R., pp. 19-20) (emphasis added). By ignoring the substance of this testimony, the court avoided evaluating the PPG on its documented merits.

The court refers to Dr. Gottfried’s testimony regarding “a diagnostic manual” and “a clinical science handbook.” These references downplay and dismiss the undisputed fact that the Diagnostic and Statistical Manual, Fifth Edition (DSM-5) is widely acknowledged as the leading authority on mental health diagnoses, and the “Sexually Violent Predators: A Clinical Science Handbook” is written by recognized experts in the field of assessing people for civil commitment as sexually violent predators. Both recognize the PPG is used as a physiological measure of sexual arousal. (R., pp. 32-36).

The court noted Dr. Gottfried “opined that SVP programs in Minnesota, California, Illinois, New York and possibly Missouri use the [Real Child Voices] methodology for treatment programs.” Then, by way of footnote, the court stated Dr. Gottfried “mentioned” those jurisdictions used the PPG “for precommitment,” but her reference to “programs” only meant the treatment programs. While Dr. Gottfried did subsequently clarify that her reference to “programs” was to SVP treatment programs in those jurisdictions, she definitively stated that evaluators in the states also used the PPG for precommitment evaluations and annual reviews. (R., pp. 42, 64-65). In short, it was undisputed that the PPG is used in those jurisdictions for evaluations as well as treatment.

⁴Her reference to “36 peer-reviewed publications or book chapters” was to her personal publications, of which four or five related to the PPG, and she had personally presented about the PPG at ten to twelve conferences.

The court further stated (and then emphasized) that Dr. Gottfried “admitted the PPG had standardization issues,” but ignored the context of her testimony regarding standardization.

Specifically, Dr. Gottfried testified:

[S]tandardization is an issue, and really what’s driving that is that other countries can do things that other countries can’t do. So, for example, my colleagues in Canada have been administering PPGs for at least 30 years, and they have been using the same stimuli for a very long time. That stimuli includes nude children, which we cannot use here in the U.S.

And so, when I’m working with this international standardization group that I’m a part of, there’s a lot of discussion about them having to change things that they’ve been using for a long time that works for them just because now, when we’re trying to internationally standardize it, they don’t want to change their methods, because this is what works for them; they’re allowed to use it. So I’d say that’s probably the biggest criticism.

(R., pp. 28, 36-37) (emphasis added). Thus, rather than generally stating there are standardization issues with the PPG, Dr. Gottfried clearly indicated the standardization criticism arises primarily from international differences between what labs in some countries can use as stimuli that labs in other countries cannot use.

In addition, the court stated Dr. Gottfried “admitted” the PPG “did not always have expected results.” Again, the court ignored the context and full extent of Dr. Gottfried’s testimony on that issue. She testified:

Another [criticism] is that it’s been noted that the PPG doesn’t always have expected results. And so, for example, it’s been noted that somebody who had offenses against children, they don’t always show arousal while undergoing a PPG to children. And to me, I don’t understand that argument for a couple of different reasons, but the main one is, is that we know that people offend against children for numerous reasons. Arousal to children is only one of them. There are people who sexual (sic) offend against children who are not sexually aroused by children, and so you would expect that those people wouldn’t be aroused to children on the PPG.

(R., p. 37). On cross-examination, Dr. Gottfried reiterated “there’s been some commentary or criticism in the literature” that men who have offended against children do not always show sexual

arousal to children on the PPG, but she again testified that having a paraphilic interest in children is only one reason people sexually offend against children, and if they offend for a non-paraphilic reason, they would not be expected to show paraphilic arousal on the PPG. (R., p. 63). In other words, Dr. Gottfried did not “admit” the PPG has unexpected results. To the contrary, she indicated such criticism was not well founded.

The court also truncated Dr. Gottfried’s PPG testimony before the jury, again reducing it to criticism regarding PPG standardization and expected results. As it did with the pre-trial testimony, the court ignored the context and full content of Dr. Gottfried’s testimony on those issues.

During her trial testimony explaining what the PPG is and how it works, similar to her pre-trial testimony, Dr. Gottfried testified there were international standardization issues, and explained why standardization between different countries is problematic. (R., pp. 228-229). As to the expected results issue, Dr. Gottfried stated some of “the literature” referenced unexpected PPG results related to people who sexually offend against children and do not show arousal to child stimuli during the PPG, but “[t]here have been a lot of studies looking at the reliability of the PPG and its ability to differentiate between people who offended against children and people who haven’t,” and the big studies “really showed that the PPG has the greatest validity and reliability” “for people who are aroused by children.” (R., p. 229-233).

Dr. Gottfried did state Appellant’s PPG results “were right in line with his offenses,” and his clinically significant arousal to trials featuring sexual activities with prepubescent females was “really consistent with his offense behaviors.”⁵ Significantly, however, she also testified about

⁵Appellant actually conceded the PPG results were “expected” because he has pedophilia (discussed below).

Appellant's responses when she discussed the results with him, including that he "was disheartened" about them and said he did not feel aroused during the scenarios but was "tense" and "mad at the aggressor." (R., pp. 233-235). That was the extent of her direct testimony about Appellant's PPG test.

The court recognized "there may be contrary authority finding the PPG is reliable and probative." (emphasis added). The case law from Washington and Illinois that the court cited definitively held, after extensive analysis, that the PPG is reliable and probative. Rather than consider the analysis in those cases, however, the court relied on dicta from In re Bilton, 432 S.C. 157, 851 S.E.2d 442 (Ct. App. 2020), stating the PPG is "controversial and has been criticized for a lack of standardization and for being subject to manipulation," and courts have "uniformly" found PPG tests results are inadmissible due to a lack of accepted standards for the test in the scientific community. The court then cited outdated case law and articles as support, while ignoring the extensive and more recent research, publications and presentations cited and discussed in Respondent's Brief, none of which were refuted by Appellant.

The court failed to apply the required abuse of discretion standard of review, ignored substantial evidence in the record, and substituted its judgment for Judge Kelly's well-reasoned ruling. Accordingly, the court should rehear this matter and affirm Judge Kelly's appropriate and meaningful exercise of his discretion.

B. The court's harmless error analysis overlooked other overwhelming evidence that supported the jury's verdict and mischaracterized Dr. Gottfried's testimony before the jury.

Error is harmless where it could not reasonably have affected the result of the trial. In re Harvey, 355 S.C. 53, 584 S.E.2d 893, 897 (2003). "A harmless error analysis is contextual and specific to the circumstances of the case," and "the materiality and prejudicial character of the

error must be determined from its relationship to the entire case.” State v. Heller, 399 S.C. 157, 731 S.E.2d 312, 320 (Ct. App. 2012) (emphasis added).⁶ “It is well settled that the admission of improper evidence is harmless where it is merely cumulative to other evidence.” State v. McFarlane, 279 S.C. 327, 306 S.E.2d 611, 613 (1983).

As with its PPG analysis, the court set forth the correct harmless error standard, but then failed to apply it. Rather than considering the PPG trial testimony in context and reviewing the case before the jury as a whole, the court simply concluded the PPG evidence may have contributed to the jury’s verdict, and therefore, error in admitting the PPG evidence was not harmless.⁷

1. Other Evidence Supporting the Jury Verdict

In finding admission of the PPG evidence was not harmless, the court overlooked other, and indeed overwhelming, evidence in the record that more than supported the jury’s verdict, even without any of the PPG evidence. Significantly, Dr. Gottfried and Dr. Gillen both diagnosed Appellant with pedophilic disorder, exclusive type, sexually aroused to female prepubescent children; they both based their diagnosis on Appellant’s significant sex offense history against prepubescent females and found his sexual attraction to children was current and ongoing; they both found Appellant had engaged in grooming behavior in his sex offenses; they both reached the same scores on the actuarial risk assessments, and testified the scores put Appellant in the average risk to reoffend sexually category when compared to other sex offenders who had reoffended sexually, but that did not necessarily equate to an individual’s actual risk; they both found

⁶All evidence is meant to be prejudicial; only unfair prejudice must be scrutinized. *See State v. Huckabee*, 49 S.C. 414, 798 S.E.2d 584, 589 (Ct. App. 2017).

⁷The State does not concede error in the admission of the PPG evidence, but as set forth above, contends there was no error. This harmless error analysis is only in response to the court’s harmless error conclusion.

Appellant had multiple dynamic risk factors for sexual reoffending; they both testified pedophilic disorder is chronic but can be treated; they both found Appellant needs treatment for his pedophilia; and they both noted Appellant had not had any sex offender treatment even though he did have an opportunity to get it while he was incarcerated. (R., pp. 179-214, 236-261, 289-291, 305-314, 319, 321-338).

Thus, in terms of the SVPA statutory elements, both experts found Appellant has a mental abnormality that is causally connected to his sexual offending and makes him a risk to sexually reoffend if not treated. The only real point of demarcation between Dr. Gottfried's and Dr. Gillen's opinions was whether Appellant needed to be confined for the treatment he needs to control his pedophilic arousal and urges. The difference in their conclusions on this issue centered on what support system and accountability Appellant would have if released, which had nothing to do with the PPG.

Dr. Gottfried testified Appellant had acted on his sexual arousal to children, and "there's nothing that he has demonstrated or that has been done that suggests that he's going to be able [to] stop himself from acting on it again." She stated that Appellant planned to live with his family, get a job, and work with a pastor on rehabilitation and spiritual growth, but nothing indicated Appellant's support system might mitigate his risk to reoffend, he "had no realistic strategies" to control his risk, and he did not know how to avoid reoffending. (R., pp. 256-260).

On cross-examination and re-direct examination, Dr. Gottfried testified she was aware Appellant had probation through January 2025, he would be required to wear a GPS device upon release, and it was likely his probation would require that he seek treatment. She stated she considered all those facts in her evaluation. Further, she stated the support system Appellant would

have if released was essentially the same support system he had when he was offending. (R., pp. 280-282, 293-294).

Dr. Gillen testified Appellant did not need to be confined for treatment because he would be on probation and receive treatment, which would help him work on “things that are still problems for him,” he would be monitored at home and by the justice system, and if he was unable to manage his “situation,” he would be put in a more restrictive environment. He stated Appellant’s parents would be “good supports for him in the community in a risk-relevant way,” that would “help mitigate or lessen his risk in the community,” and they recognized Appellant has “chronic problems that plague [Appellant]; that’s lifelong.” On cross-examination, Dr. Gillen acknowledged Appellant “does have some treatment needs,” and sex offense specific treatment would “come in handy.” (R., pp. 314-320, 336-338).

Appellant’s mother testified her husband was 73 years old with health problems, including “forgetfulness,” she has Parkinson’s disease, she was willing to let Appellant live with them and she was aware of the conditions of his probation. She acknowledged she could not control Appellant, but stated she would make him leave her home and she would call the authorities if she knew Appellant did something he should not do. (R., pp. 346-351).

The jury heard from two experts who agreed on virtually everything except Appellant’s need to be confined for treatment. Neither expert’s opinion on that issue hinged in any way on the PPG test results, and they did not even reference the PPG when explaining the basis for their opinions on the issue. Rather, their opinions focused on the sufficiency of Appellant’s support system if released.

Dr. Gottfried was aware of Appellant’s probation requirements and his plan to live with his parents and explained why she thought that was inadequate to prevent Appellant from

reoffending. Dr. Gillen's opinion was based on Appellant's probation, his mother's supervision, and the ability of the legal system to control Appellant's conduct. Significantly, the jury also heard Appellant's mother concede she could not control Appellant even if he lived in her home, which undermined Dr. Gillen's analysis regarding the strength of Appellant's support and accountability system in the community.

The jury was free to accept or reject either expert's opinion on the issue of whether Appellant should be confined to receive the treatment both experts opined he needs. Even without the PPG evidence, there was more than sufficient, indeed overwhelming, evidence to support the jury's determination that Appellant has a mental abnormality (undisputed), his sexual offending was caused by his mental abnormality (undisputed), he needed treatment to help manage his current and on-going deviant urges and arousal (undisputed), and he needed to be confined for that treatment because his restrictions and community support were insufficient. In light of that evidence, any error in admitting the PPG evidence was harmless beyond any reasonable doubt.

2. Dr. Gottfried's PPG Testimony

The court made much of the fact that Dr. Gottfried was the State's sole witness, and stated that "a significant portion of her testimony centered on the PPG test." While it is true Dr. Gottfried was the State's only witness, classifying her PPG test testimony as "a significant portion of her testimony" is misleading and inaccurate.

As a threshold matter, the court stated Dr. Gottfried "emphasized" to the jury that the PPG is an "objective test of male sexual arousal," which mischaracterizes one simple six word statement as "emphasizing" something to the jury. The court then dismissed Dr. Gottfried's testimony about the importance of objectively knowing what sexually arouses the person being evaluated as a mere "claim." Recent studies, research and published articles refer to the PPG as an "objective" way to

measure male sexual arousal. *See, e.g.,* Murphy, L., *et. al.*, Standardization of Penile Plethysmography in Assessment of Problematic Sexual Interests, J. Sex. Med. 12(9): 1853-1861 (2015) (PPG test “has become a standard objective measure of arousal”).⁸ Thus, Dr. Gottfried’s statement was scientifically sound and amply supported rather than a mere “claim.”

As to the extent and significance of Dr. Gottfried’s PPG testimony, her direct testimony is on pages 168-261 (93 pages) of the record, and her entire PPG testimony during the State’s case is on pages 222-235 (13 pages - 14% of her entire testimony). The vast majority of her PPG direct testimony (pp. 222-233 – 11 pages or 85%) was devoted to explaining what the PPG is, describing the test machine and how it works, the standardization and expected results issues (which the court used to find the PPG is not reliable), and MUSC’s training and protocols for every PPG performed in its lab. Her testimony regarding Appellant’s test is found on pages 233-235, for a total of two pages (2% of her entire direct testimony and 15% of her entire PPG testimony).

In short, eighty pages (86%) of Dr. Gottfried’s direct testimony was devoted to her credentials and evidence other than the PPG, including: the facts of Appellant’s sex offenses against prepubescent female children; the battery of psychological tests in her evaluation protocol and Appellant’s results on those tests; Appellant’s statements to her during the clinical interview; her diagnosis of pedophilic disorder, exclusive type, sexually aroused to female prepubescent children; the actuarial risk assessments she used and Appellant’s level of risk according to those assessments; Appellant’s dynamic risk factors for reoffending; Appellant’s need for treatment and lack thereof; Appellant’s support system in the community if released; and her ultimate opinion that Appellant met the criteria for civil commitment under the SVPA. Fourteen percent, or

⁸Other articles and relevant publications are cited on pages 23-26 of the Brief of Respondent.

substantially less than one-fifth, of Dr. Gottfried's entire direct testimony hardly constitutes a "significant portion of her testimony."

Dr. Gottfried's only other testimony regarding the PPG occurred during cross-examination. Appellant's counsel questioned her briefly about Appellant's PPG test, focusing on Appellant's failure to show any arousal to the Marshall stimulus set, that Appellant's results were "exactly what [Dr. Gottfried] expected," and "it's what we all know, he - - he has a pedophilic disorder." (R., pp. 270-272). Thus, even considering Dr. Gottfried's cross-examination testimony, her PPG testimony was not a "significant portion of her testimony." Further, the PPG results evidence was arguably cumulative to the undisputed evidence (discussed above) that Appellant has pedophilia, with current and on-going sexual arousal to prepubescent children.

The State briefly referenced the PPG test during closing argument as only one data point in Appellant's comprehensive psychosexual evaluation, focusing instead on the thoroughness of Dr. Gottfried's evaluation, Appellant's offenses, Appellant's statements to Dr. Gottfried, the issues the two experts agreed on, and the basis for Dr. Gillen's opinion Appellant did not need to be confined for treatment. (R., pp. 360-372). More significantly, Appellant's counsel argued in closing that the PPG merely showed Appellant had a pedophilic disorder, which he admitted. (R., pp. 376-377). Thus, contrary to the court's characterization of Dr. Gottfried's testimony as "centered on the PPG test," the PPG was actually a minimal part of her testimony, the State did not emphasize it in closing, and Appellant admitted the results were expected.

In concluding the purported error in admitting the PPG evidence was not harmless, nothing in the court's opinion indicates the court considered or analyzed any of the other undisputed evidence before the jury. Accordingly, the court should rehear this matter and find that any error from admission of the PPG evidence was harmless beyond a reasonable doubt.

CONCLUSION

Based on the foregoing and the matter set forth in the Brief of Respondent, the State respectfully requests that the court reconsider and rehear this case, reverse its opinion, and affirm Appellant's commitment under the SVPA.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

July 12, 2024

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case No. 2022-000371

IN THE MATTER OF THE CARE AND TREATMENT
OF SHAWN TORLIF DAILY,

APPELLANT

PROOF OF SERVICE

I, Grace Sommer, certify I served the Respondent's Petition for Rehearing on Appellant by email to the Appellant's counsel at the address reflected in the AIS system. The Respondent's Petition for Rehearing has also been filed with the Court of Appeals through the AIS system.

Lara M. Caudy
Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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I further certify that all parties required by Rule to be served have been served.

This 12th day of July, 2024.


GRACE SOMMER
Legal Assistant

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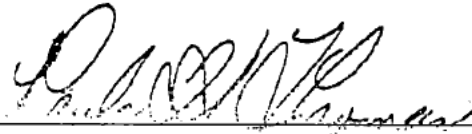
The South Carolina Court of Appeals

In the Matter of the Care and Treatment of Shawn Torlif
Daily, Appellant.

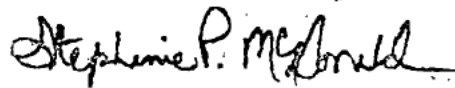
Appellate Case No. 2022-000371

ORDER

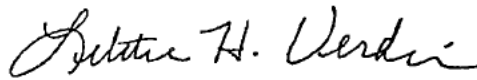
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



A.J.

Columbia, South Carolina

cc:

Deborah R.J. Shupe, Esquire
Alan McCrory Wilson, Esquire
Lara Mary Caudy, Esquire
The Honorable R. Keith Kelly

FILED
Sep 06 2024