

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Oct 21 2024

Appeal from Anderson County
The Honorable R. Scott Sprouse, Circuit Court Judge
Appellate Case No. 2021-000733

S.C. SUPREME COURT

IN THE MATTER OF THE CARE AND TREATMENT
OF JAMES L. WILLIFORD,

Respondent.

APPENDIX

ALAN WILSON
Attorney General

SARAH E. SHIPE
Appellate Defender

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General

SC Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589

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

Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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Honorable R. Scott Sprouse, Circuit Court Judge

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TREATMENT OF JAMES L. WILLIFORD,

APPELLANT.

APPELLATE CASE NO. 2021-000733

RECORD ON APPEAL

SARAH E. SHIPE
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

ALAN WILSON
Attorney General

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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ORDER OF COMMITMENT 283

1 In the Court of Common Pleas for the
2 State of South Carolina, County of Anderson

3
4 Case No.: 2019CP04001308

5 In The Matter of the Care and Treatment of:

6 James L. Williford.

7
8
9 **Transcript of Record**

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13 June 14, 2021

14 Anderson, South Carolina

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18 BEFORE:

19 The Honorable R. Scott Sprouse
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APPEARANCES

REPRESENTING THE STATE:

Christopher Runyan, Esquire

Suzanne J. Shaw, Esquire

Office of the Attorney General

Post Office Box 11549

Columbia, SC 29211

REPRESENTING MR. WILLIFORD:

Don Thompson, Esquire

107 Smithwood Court

Simpsonville, SC 29681

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PRETRIAL MOTIONS

1 PROCEEDINGS

2 THE COURT: All right. Madam Clerk, would you
3 call the first case?

4 THE CLERK: Yes, sir. Your Honor, our first case
5 is Case Number 2019CP0401308, South Carolina, State Of,
6 versus James Lewis Williford.

7 THE COURT: Mr. Thompson.

8 MR. THOMPSON: Thank you, Your Honor. Judge, I
9 represent Mr. Williford in this sexual violent predator
10 action, and it was initially set as a jury trial.

11 Last week, it came to our attention that the
12 request for jury trial was not filed in a timely motion
13 per statute. And we had a conference call with Judge
14 Maddox on Friday, and he at that point in time, it's my
15 recollection, advised us that we were entitled to a
16 bench trial if that's what we wanted instead of a jury
17 trial, but he'd leave it up to this morning to Mr.
18 Williford to make a decision.

19 I talked to Mr. Williford a little while ago, he
20 does want a bench trial instead of a jury trial.

21 Is that correct, Mr. Williford?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Mr. Williford, would you stand,
24 please. The clerk will put you under oath.

25 THE WITNESS: Yes, sir.

PRETRIAL MOTIONS

1 Thereupon,

2 JAMES L. WILLIFORD

3 was called as a witness, having been first duly sworn,

4 was examined and testified as follows:

5 THE COURT: All right. Mr. Williford, have you
6 had enough time to confer with your attorney regarding
7 this issue?

8 THE DEFENDANT: Not really, Your Honor. I got a
9 motion, and I have it with me, I would like to present
10 to the Court to dismiss.

11 THE COURT: Okay. All right. And I'm going to
12 hear that in just a second.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And as to the issue regarding whether
15 or not to proceed with a jury trial or a bench trial,
16 have you discussed that with your attorney?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you need any more time to discuss
19 that issue with your attorney?

20 THE DEFENDANT: No, sir.

21 THE COURT: And do you wish to proceed with a
22 bench trial instead of a jury trial?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And you understand this would give up
25 your right to have a jury trial --

PRETRIAL MOTIONS

1 THE DEFENDANT: Yes, sir.

2 THE COURT: -- on this issue?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: That is what you want to do?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Anyone force you to make that
7 decision?

8 THE DEFENDANT: No, sir.

9 THE COURT: You doing that completely of your own
10 free will?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay. Thank you.

13 THE DEFENDANT: Yes, sir. Thank you.

14 THE COURT: Anything else, Mr. Thompson?

15 MR. THOMPSON: The only other thing I have, Your
16 Honor, is his family brought clothes for him to dress
17 out, but I understand being a bench trial, the Court
18 doesn't believe it's necessary to do that.

19 THE COURT: That's not necessary. The Court is
20 aware that he's in custody and that that is primarily a
21 jury consideration.

22 MR. THOMPSON: Yes, sir. So I have nothing
23 further.

24 THE COURT: Okay. Anything from the State?

25 MR. RUNYAN: Yes, Your Honor. Chris Runyan for

PRETRIAL MOTIONS

1 representing the State of South Carolina.

2 As Mr. Thompson accurately mentioned, we had a
3 conference call with Judge Maddox where this issue was
4 raised, of the untimeliness of the jury trial request
5 on the State's behalf, and that is a fact. The jury
6 trial request was untimely.

7 The only defense that I can offer to you, Your
8 Honor, is that it's a defense laches. That is, you
9 know, this error was made in February of 2020. I know
10 the Court shut down for COVID, but when courts opened
11 back up, Mr. Thompson and I moved quickly to set this
12 trial. The trial date was set on April the 4th of this
13 year. So it's been about 60 days for this objection to
14 be made, hasn't been made, so we just think that it
15 hasn't been timely.

16 The State is being prejudiced because we do wish
17 to have a jury trial, and I would leave it at that,
18 Your Honor.

19 THE COURT: All right. I have reviewed the file,
20 and I will deny your request and we will proceed as
21 requested by the Defendant.

22 MR. RUNYAN: Thank you, Your Honor.

23 THE COURT: Let's do this. We have a number -- I
24 believe the State has a Motion in Limine, and then
25 Mr. Williford has some matters he wishes to take up.

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1 Mr. Thompson, I believe has a motion before me,
2 and Mr. Williford has covered that. So let me get the
3 jury in here, and I'm going to dismiss them for the
4 day, and then we will proceed.

5 All right. Mr. Bailiff, will you get our jury?

6 MR. THOMPSON: Are we in this courtroom, are we --
7 we were told that we were moved to courtroom number 3?

8 THE COURT: We are here to stay.

9 MR. THOMPSON: Oh, okay. We'll have to find our
10 doctors.

11 MR. RUNYAN: Mine's up here, so --

12 THE COURT: They got probation downstairs, so we
13 are here.

14 MR. THOMPSON: Okay. Thank you.

15 (Jury enters the courtroom.)

16 THE COURT: Okay. Ladies and gentlemen, there are
17 a number of matters of law that we have to take up, and
18 I have been informed that the issue of the first case
19 are not issues for the jury. So this will conclude
20 your service today.

21 I'm not going to have you sit up here when you are
22 not needed. So you can go home, but call the number
23 that the clerk has given you tonight, after 6:00, and
24 it will give you instructions for tomorrow.

25 So Mr. Clerk, are you going to give that phone

PRETRIAL MOTIONS

1 number -- okay. He's going to give you a handout.

2 THE CLERK: As I was telling you earlier, this is
3 an answering machine, and 99 times out of 100, it's me.
4 Then I have to have time, sometimes court goes until 5,
5 5:30. So I have to have time to get downstairs and put
6 the message on the machines.

7 Usually -- not usually -- I always say thank you
8 for calling the jury information line. It is Monday,
9 June the 14th.

10 So, you will know that you are hearing today's
11 message. And it will either say, please come back
12 tomorrow or to call back tomorrow night.

13 That's -- and I do want to ask you to be aware of
14 this, too. Usually on civil trials, we always do jury
15 qualifications up here because we have a big crowd and
16 we need the room. But usually on civil trials, we hold
17 those on the third floor because it's a smaller
18 courtroom, and it's easier for everybody to hear and
19 just easier for us to conduct our civil business.

20 So when you listen to the voice mail, when it does
21 ask you to come back, it probably will be to come back
22 to the third floor. Okay. So just get off the
23 elevator on the third floor the lobby looks pretty
24 similar to this one, and we've got two courtrooms on
25 the third floor instead of just a big one. Okay.

PRETRIAL MOTIONS

1 But this number, if you will wait until after 6:00
2 to give me a chance to get the message on the machine,
3 and just call back tonight, we will have further
4 instructions.

5 And once you have the number, you are excused for
6 today. We thank you for being here today.

7 (Jury exits the courtroom.)

8 MR. THOMPSON: Your Honor, may I have a moment to
9 step out, sir, so I can locate my doctor?

10 (Pause.)

11 THE COURT: Okay. Mr. Thompson, let's deal with
12 your -- I believe your client has a motion that he
13 would like to make. Let's deal with that first and
14 then I'll hear the second one.

15 MR. THOMPSON: All right, sir.

16 THE DEFENDANT: Thank you, Your Honor.

17 If I may, for the record, Your Honor present this
18 motion of --

19 THE COURT: You can pull your mask down while you
20 talk.

21 THE DEFENDANT: If I may, Your Honor, for the
22 record, present this Motion to Dismiss based on the
23 grounds of mandatory timeframe being exercised ahead of
24 trial, and ineffective assistance of counselor to this
25 Court?

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1 THE COURT: Okay. What are you basing the
2 mandatory timeframe argument about?

3 THE DEFENDANT: It was based on the 60-day period
4 and 90-day period, according to Section 44-48-90
5 and Section 44-48-80.

6 THE COURT: Okay. And are you alleging the State
7 did not bring the case in a timely manner?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. Have you conferred with Mr.
10 Thompson on that issue?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay. Mr. Thompson, is there anything
13 for the record that you would like to state on that
14 issue?

15 MR. THOMPSON: Your Honor, the only thing I can
16 say is I don't -- I don't concur in his reasoning. But
17 I'm not going to sit here and say -- what he's saying
18 is that, we had the probable cause hearing. And the
19 statute says that after the evaluation the Court is to
20 try the case within 90 days.

21 But we had the COVID, and jury trials were closed
22 down for a year. Maybe a little bit more. But he's of
23 the opinion this trial should have taken place back in,
24 I think it was either May or June, when the last
25 evaluation was done, of last year. And he is of the

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1 opinion that the 90-day period started running at that
2 point in time.

3 As I say, I can't concur in that because of the
4 courts being closed, but I believe that's the gist of
5 his argument.

6 THE DEFENDANT: It was April, the evaluation.

7 MR. THOMPSON: All right.

8 THE COURT: And, Mr. Williford, is that your
9 disagreement with your counsel regarding that issue, is
10 that what you are alleging is the ineffective
11 assistance of counsel?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Okay. Okay. Thank you.
14 All right. Let me hear from the State.

15 THE DEFENDANT: Yes, thank you.

16 MR. RUNYAN: Thank you, Your Honor.

17 Yes, the statute does require that within -- that
18 a trial be held within 90 days. As Mr. Thompson had
19 noted, the 90 days fell within the time frame of when
20 the courts were closed, and it is by Supreme Court's
21 order all cases were continued.

22 When the Supreme Court lifted that order in March
23 of this year, I believe it was, and stated they would
24 be reopening jury trials as of April 19th of this year,
25 Mr. Thompson and I conferred and moved as quickly as

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1 possible to schedule this trial, which we did, which
2 was scheduled on April 16th of this year, for this date
3 certain date.

4 So we would respectfully request that you deny the
5 Respondent's Motion to Dismiss.

6 THE COURT: All right. I have reviewed the file,
7 and Mr. Williford is correct in that the 90-day is
8 placed on the trial of the case.

9 However, as has been noted by counsel, the Chief
10 Justice of the South Carolina Supreme Court suspended
11 court operations by administrative order. And when the
12 pandemic began, that order was updated several times
13 from its original issuance.

14 However, jury trials were suspended. There was a
15 brief attempt on a trial basis to resume jury trials in
16 the fall; however, that was not successful due to the
17 raging resurgence of the COVID virus, in which
18 everything was shut down further until this spring.

19 The April date is correct that had been mentioned
20 in the hearing in which jury trials were restarted by
21 order of the Chief Justice, and this case is being
22 heard within 90 days of the resumption of jury trials.

23 So, Mr. Williford, I would deny your Motion to
24 Dismiss, but it is noted for the record.

25 All right. Is there anything further from the

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1 Defendant before we proceed with the State's motion?

2 MR. THOMPSON: Not related to that, Your Honor.

3 And I would preserve Mr. Williford's objection on the
4 record.

5 THE COURT: Yes, sir, it is noted for the record.

6 MR. THOMPSON: We have some -- I have a Motion in
7 Limine dealing with the PPG test in this case, and I
8 think the State has some motions.

9 MR. RUNYAN: That's correct. We have four Motions
10 in Limine that will take a couple minutes each.

11 THE COURT: Okay. Okay. All right.

12 MR. THOMPSON: Mine may take an hour or so, Judge.

13 THE COURT: All right. Well, let's go ahead and
14 deal with the State's, and then we will go back to
15 Mr. Thompson. All right. Mr. Runyan.

16 MR. RUNYAN: Thank you, Your Honor. May it please
17 the Court.

18 Our first Motion in Limine is a motion to bar any
19 testimony regarding the facts of the location of where
20 treatment will be held, that it would be likely in the
21 prison or that the Respondent is being punished or
22 committed for life, or for an indeterminate amount of
23 time.

24 As you know, the Supreme Court has held in NRA
25 (phonetic) Matthews, which is cited in our motion, that

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1 this is a civil, not a criminal matter, and the
2 location of where the treatment is going to be held
3 does not transform the intent of the State to punish
4 somebody rather than treat them.

5 We feel like it's irrelevant to the question that
6 has to be answered as to whether or not Mr. Williford
7 is a sexually violent predator, and it would be
8 prejudicial to -- well, limited in a bench trial, but
9 there is prejudice to the State. We don't think that
10 terms like prison or punishment should be talked about
11 during trial.

12 THE COURT: Okay. And, Mr. Runyan, I understand
13 the motion, but the Court is aware of the difference
14 between prison and treatment.

15 So Mr. Thompson, anything?

16 MR. THOMPSON: I was just going to say, Judge,
17 I've have been practicing 41 years. I've tried to
18 never practice law by ambush or deceit. I have never,
19 in one of these cases, raised the issue of it being a
20 prison or detention or punishment, and I don't intend
21 to in this case.

22 THE COURT: Okay. Well, again, the Court is aware
23 of the mechanics of the situation, so I would really --
24 there won't be any mention of prison in the case, but
25 that is really a jury -- a matter for the jury.

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1 MR. RUNYAN: Yes, sir. It must be applied in a
2 jury trial, but I do think we need to put them on the
3 record just so we know if that stuff does come up.

4 THE COURT: Yes, sir. Yes, sir. It's noted for
5 the record.

6 MR. RUNYAN: Thank you.

7 Then most of these we'll try to take care of very
8 summarily then, Your Honor. Our second motion is to
9 bar any testimony about future treatment or whether
10 treatment would be successful.

11 The United States Supreme Court has said that just
12 that the mere fact that treatment cannot be effective
13 in the future doesn't mean that these people shouldn't
14 be committed for civil -- as a sexually violent
15 predator.

16 So, we would ask that any discussion about future
17 treatments not be discussed during the trial.

18 THE COURT: And Mr. Thompson?

19 MR. THOMPSON: I agree with that, Your Honor. The
20 only thing I might take a little bit of issue with that
21 on is, in one of the reports there is some mention as
22 to whether or not treatment in the community and
23 medications might be of benefit. And I don't want to
24 be precluded from being able to ask about that.

25 But as far as if he were to be committed, what

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1 kind of treatment he would receive and for how long, I
2 have no intention of going into that.

3 MR. RUNYAN: Yeah. And I don't think -- we
4 wouldn't object to him talking about that, outpatient
5 versus inpatient.

6 THE COURT: So noted. So noted.

7 MR. RUNYAN: And our third motion is just, Your
8 Honor, to limit any discussion about how long Mr.
9 Williford has been detained since his release from the
10 Department of Corrections.

11 As you know, under the probable cause order, these
12 guys that are under this are to be held until the
13 conclusion of these proceedings. There's no bond for
14 them. There's no way they can get out, so we would
15 just -- any reference to any amount of time he's been
16 in there, we would ask not be --

17 THE COURT: Okay. The Court is aware when the
18 order was signed, Mr. Runyan, because the Court signed
19 the order.

20 MR. RUNYAN: Yes, sir. As I said, I'm just making
21 a record, Your Honor, because I have to do it.

22 THE COURT: Yes, sir. Yes, sir, I understand.

23 MR. THOMPSON: I don't plan to argue anything on
24 those lines.

25 THE COURT: Yes, sir. Okay.

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1 MR. RUNYAN: And our final motion, Your Honor, on
2 a little different tack here, is a Motion in Limine to
3 exclude the testimony of Dr. Christopher Gilliland.

4 The statute requires that these guys get examined
5 by a mental health professional, and it says the State
6 requires a qualified expert. And this order
7 specifically cites one of the following qualified
8 experts for sexually -- well, for the cases. And as
9 part of our motion, have you got a copy, Your Honor?

10 THE COURT: Yes, sir, I have a copy.

11 MR. RUNYAN: Okay. Exhibit A shows the list of
12 qualified experts by order. And Dr. Gilliland's name
13 does not appear on that list. Dr. Gilliland was just
14 hired upon information, I believe, in October when this
15 order came out.

16 He was assigned to work with Dr. Tross so that he
17 could understand how the inmate procedures are, what
18 their training is, and to ensure that Dr. Gilliland
19 knew how to do the work.

20 They did this report together. They -- he signed
21 off as staff psychologist. Dr. Tross signed off as
22 chief psychologist. And we believe that Dr. Tross was
23 the primary evaluator appointed by the Court through
24 DMH. And that this is a collective diagnosis with the
25 assistance of Dr. Gilliland. But they issued one joint

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1 opinion.

2 And as you'll see in Exhibit B, their final
3 conclusions were "our" opinion, uses phrases like "our
4 opinion". So we think that it would be prejudicial if
5 multiple experts were allowed to come on and discuss
6 what is essentially the same testimony. It would be
7 needless and it would be cumulative. Not to mention
8 any testimony by Dr. Tross about whether, you know, Dr.
9 Gilliland did a good job, or he did it by standards,
10 would be bolstering and vouching for his work. So we'd
11 ask that Dr. Tross be the one who would be allowed to
12 testify.

13 THE COURT: All right. Thank you. Mr. Thompson,
14 response?

15 MR. THOMPSON: Your Honor, if this were a jury
16 trial, I might be more vociferous in my -- my
17 insistence that they both be allowed to testify,
18 because I have had trials before where juries have
19 afterwards said, I wish we had two doctors on one side
20 as opposed to one so we would know what to do.

21 But in this case, the State is right. Dr. Tross
22 was the chief psychologist at the time, and
23 Dr. Gilliland had just come on.

24 I've talked with both Dr. Tross and Dr. Gilliland,
25 and they're -- they both have a little bit different

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1 view of the way things were arrived at.

2 And according to my conversations with them, they
3 each arrived at this decision, but they kind of took a
4 different path getting there.

5 However, being this is a bench trial, I don't
6 think that Mr. Williford will be very prejudiced very
7 much with just Dr. Tross testifying. But I would ask
8 you to reserve the right for me, if something comes up
9 during the trial, to possibly call Dr. Gilliland if
10 necessary.

11 THE COURT: Yes, sir. Yes, sir. Well, and I have
12 the report, and I'm sure -- each party is going to
13 refer to the report in testimony, so we will do that.
14 Just call Dr. Tross. But you will have the right to,
15 if there is some new issue that's not anticipated that
16 Dr. Gilliland can provide a unique, a unique
17 perspective. We don't want cumulative evidence.

18 MR. THOMPSON: Yes, sir.

19 THE COURT: I mean, the State is justified and we
20 don't need two doctors to say exactly the same thing.
21 But if there is some new issue, you would have the
22 right to recall Dr. Gilliland as a reply. Okay?

23 MR. RUNYAN: Thank you, Your Honor.

24 MR. THOMPSON: Thank you.

25 MR. RUNYAN: No further motions from the State,

PRETRIAL MOTIONS

1 Your Honor.

2 THE COURT: Okay. All right. Mr. Thompson, let
3 me hear yours.

4 MR. THOMPSON: Judge, I will hand up this copy. I
5 filed last week a Motion in Limine as to PPG. I
6 realized there were two words meant to be added to it,
7 so I did that and I filed an amended this morning.
8 I've given a copy to Mr. Runyan.

9 And the two words I simply added, for the record,
10 were in my original motion. I had -- in the argument,
11 I may have said the "Jones standard" in two different
12 places, when I meant to actually say the
13 "Council/Jones" standard.

14 So I added the word "Council, slash" in two
15 different places in front of Jones. And that is the
16 only amendment that I made to it.

17 Okay. You ready to hear from me, Judge?

18 THE COURT: Yes, sir.

19 MR. THOMPSON: Judge, Mr. Williford was given a
20 PPG at the Medical University of South Carolina when
21 the State conducted their evaluation of him, and we
22 would move to suppress any testimony of PPG or results
23 of the PPG, based on the fact that we don't think it
24 meets the requirements of admissibility for scientific
25 evidence.

PRETRIAL MOTIONS

1 And I realize we're dealing with Rule 702, which
2 is what scientific evidence comes in. But our Supreme
3 Court has said that the -- in order to admit scientific
4 evidence under Rule 702, you look at Council, State
5 versus Council and the State versus Jones.

6 And in the State versus Council case, they
7 indicate that there's -- under Jones, that there is
8 several factors to look into. One is the publications
9 and peer review of the technique. Two is the prior
10 application of the methods and the type of evidence
11 involved in the case.

12 Three is the quality control procedures used to
13 ensure reliability. And four is the consistency of the
14 method which recognizes scientific laws and procedures.

15 Judge, our first objection is that we don't think
16 there's any standardization related to testing in this
17 matter. It appears from looking at cases around the
18 country and all, everybody seems to be doing it a
19 little bit different way. There doesn't seem to be any
20 particular standardization. And I would particularly
21 make note of a case from our Court of Appeals in
22 October of last year In Re: Bilton.

23 And Judge, Bilton was not determined on the issue
24 of whether this was admissible. I want to make that
25 clear upfront. I'm not trying to mislead.

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1 Bilton ruled on the issue of whether or not the
2 doctor testifying had the -- had the knowledge to
3 testify, or basically was just passing along
4 information that she had been given.

5 But in Bilton, in the dicta, I guess that's the
6 best way of putting it, our Court of Appeals says the
7 test is controversial and has been criticized for a
8 lack of standardization and for being subject to
9 manipulation.

10 Courts have noted that PPGs are routinely used as
11 a tool in treatment programs. Even so, with limited
12 exceptions, courts have uniformly declared the PPG
13 test, the test results are inadmissible as evidence
14 because there are no accepted standards for this test
15 in the scientific community. And they cite the Glasner
16 case.

17 And like I say, while I realize that's dicta in
18 the Bilton case, it is an indication, I think, of the
19 way the Court of Appeals was thinking. That was --
20 they didn't have to put it in that order or that
21 opinion, but they did put it in there.

22 Second, Judge, this case is not -- this test was
23 given in this case is a test that was developed by
24 Dr. Burke of Summerville, and we are of the opinion
25 that there is no adequate publication or peer review

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1 involving this matter. And that would go to the first
2 factor under Council versus Jones.

3 Third, again, goes to a factor under Council
4 versus Jones. We don't believe there is any quality
5 control procedures in place to ensure reliability. I
6 mean, like I say, in Bilton they indicate there's no
7 accepted standards for the test in the scientific
8 community.

9 We just are not certain that there are any, and
10 believe that there are not any quality control
11 procedures. And those can lead to false positives and
12 false negatives.

13 Fourthly, and this -- this is something, quite
14 frankly, Judge, that maybe I made up. But in college I
15 was a chemistry major, and you always had a margin of
16 error on a scientific test that you could measure. And
17 there are no margins of error that I'm aware of that
18 can be measured as to a PPG. I found no -- I don't
19 want to mislead the Court. I found no case law dealing
20 with that anywhere, but I think that if it's a
21 scientific test it should have a margin of error that
22 can be measured. And in this case, I do not believe
23 that it does.

24 Judge, the PPG fails to meet the fourth factor set
25 forth in Council versus Jones, because there's no

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1 consistency of the method with scientific laws and
2 procedures.

3 There's nothing from cite to cite as to what
4 pictures are shown. And let me go back and just make
5 sure I've -- that you know what a PPG is. But it's a
6 situation where they place a ring around the man's
7 penis, they show him various pictures and see if there
8 is a reaction.

9 In this case they also show, or put -- he told me
10 they put a headphone on him and played voices into that
11 headphone -- some of the voices are children's voices
12 -- to seek a reaction.

13 There is no standard in this country for the type
14 picture to be shown, the order of pictures to be shown,
15 whether or not voices are shown or played, what type of
16 voices are played if they do. Just -- there's just --
17 it's kind of up to each lab to decide how they want to
18 do it. There's no standardization of it. So we would
19 argue that, therefore, that it is not reliable.

20 Judge, we also argue that it doesn't meet the
21 requirements of admissibility because Dr. Burke's test
22 is a test -- I think they call it real child voices,
23 they played not only adult voices, which some other
24 labs do, but they play -- he's developed one called
25 real child voices, where they play children's voices.

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1 That is something that I don't think is commonly used,
2 other than in South Carolina at the Medical University.
3 I don't think it's something that has been fully peer
4 reviewed. I know there's some publication where --
5 Dr. Burke has published it, dealing with it. But we
6 would argue that that doesn't make it reliable.

7 I ask Mr. -- I have never heard one of these, and
8 I asked Mr. Williford this morning, I said, what kind
9 of voices were they? And he told me, he said, you
10 know, there were all kinds of different voices. And I
11 said, Well, what did they say? He said, They said all
12 kinds of things. He said, Some of them was children,
13 some of them was adults.

14 I said, Well, specifically what did children say?
15 And he said, I don't remember specifically, but he
16 said, Some of it was dirty.

17 Now, I know there's some cautions in the
18 literature about dealing with child voices, but dealing
19 with children's pictures, that they cannot use
20 pornographic pictures of children because they would
21 get in trouble with the law in various jurisdictions
22 for possession of pornography.

23 But if they're doing the same thing just using
24 voices, I think that creates a problem, too. And we
25 would argue that the test is not reliable.

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1 Judge, also we would argue that -- and the PPG
2 testing -- the history on it was developed in Eastern
3 Europe to World War II era for people that were trying
4 to get out of military inscription by saying they were
5 gay. So they developed this test to determine whether
6 or not they were gay.

7 Then they -- it's moved over here and we're using
8 it for other things. I do realize that mental health
9 professionals do consider an appropriate test for
10 treatment purposes, not for evaluation, not for a
11 forensic determination of whether or not the literature
12 says whether or not their guilt or innocence. But in
13 this case, that's kind of what we're dealing with,
14 should he go into treatment or not. So we are dealing
15 with a forensic evaluation.

16 But if the medical field does use it and it is
17 considered, I think, proper in most jurisdictions to
18 use it in a treatment program to get a baseline of
19 where the person is at at a certain period of time, and
20 then to use it again down the road to see if it has
21 changed or if that treatment is working, or if they
22 need to change the treatment and do something else.

23 So based on that, we would argue that, while it's
24 good for treatment, it is not to be used for forensic
25 evaluation or as a diagnostic tool.

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1 And lastly, we would argue that the prejudicial
2 effect of the PPG, given all of the things I have just
3 talked about, would far outweigh any probative value.
4 And, you know, therefore, it should not be relevant in
5 this case.

6 And I think that is basically my argument. We
7 have a doctor I would put up, but I may just wait and
8 put it up in reply to the State's case. I may not need
9 to so --

10 THE COURT: Thank you, Mr. Thompson.

11 MR. THOMPSON: Thank you.

12 THE COURT: Mr. Runyan.

13 MR. RUNYAN: Thank you, Your Honor.

14 As you know, the admissibility of evidence is one
15 of the sound discretion of the trial judge, and the
16 trial judge must exercise the gatekeeping functions to
17 establish reliability, and you know, the Jones factors
18 that Mr. Thompson listed.

19 And we'd reply -- before we start, Your Honor, I
20 forgot. We -- late this morning -- we got served this
21 motion Thursday. Yeah, it wasn't within the ten days
22 that we are supposed to get, per the rules, but that's
23 not the issue. I just wanted to make that for the
24 record, but we did file a response that we sent -- we
25 filed this morning, I'd like to make sure you have it.

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1 THE COURT: If you have a hard copy, you can hand
2 that up.

3 MR. RUNYAN: So first, I'd like to address the
4 matter of Bilton. You know, Mr. Thompson is right, it
5 is not an issue about admissibility. That was a very
6 narrow issue. In fact, the Court in Bilton says, We
7 are only here to decide this narrow issue. And the
8 narrow issue was whether -- it was about hearsay,
9 common hearsay, can one doctor testify to what another
10 doctor did. And the Court in Bilton said, No.

11 What the Court wrote in dicta is just that. In
12 fact, South Carolina circuit courts had admitted a PPG
13 as evidence in the past. In fact, just last week, in
14 the matter of The Care and Treatment of Andy Hyman
15 (phonetic), which was in Florence County, the circuit
16 court judge found the PPG reliable after a full council
17 hearing.

18 In 2018, attached as an exhibit to this motion --
19 or, sorry, this response, in The Matter and Care of
20 Treatment of Ronald M. Gregg, a circuit court judge in
21 Charleston found the PPG admissible after a full
22 council hearing with expert testimony from two opposing
23 experts.

24 So it is admissible, and it's within the sound
25 discretion of the trial judge.

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1 I think the best thing to do here would be to
2 bring on Dr. Gottfried and let her testify to
3 reliability.

4 THE COURT: Proffer?

5 MR. RUNYAN: Yeah.

6 THE COURT: Okay. All right. Go ahead.

7 MR. RUNYAN: The State would call Dr. Emily
8 Gottfried.

9 Thereupon,

10 DR. EMILY GOTTFRIED

11 was called as a witness, having been first duly sworn,
12 was examined and testified as follows:

13 MR. RUNYAN: And Your Honor, Mr. Thompson, for
14 purposes of this hearing, do you need me to qualify
15 her, or do you want to stipulate she's an expert in
16 forensic psychology?

17 MR. THOMPSON: I'll stipulate for purposes of this
18 hearing, Judge.

19 MR. RUNYAN: Thank you.

20 THE COURT: So noted.

21 DIRECT EXAMINATION

22 BY MR. RUNYAN:

23 Q Good morning.

24 A Good morning.

25 Q Dr. Gottfried, where are you employed?

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1 A I work at the Medical University of South
2 Carolina.

3 Q And what is your current job and title?

4 A I am an assistant professor of psychiatry and
5 behavioral sciences at MUSC. I also serve as the director
6 of our sexual behaviors clinic and lab. I conduct
7 forensic evaluations, oversee treatment, and teach and
8 supervise medical students, psychiatry residents, forensic
9 fellows, and an assortment of students.

10 Q And are you a member of any professional
11 associations or research collaborations?

12 A Yes.

13 Q And what are they?

14 A A number. Let's see, I'm a clinical member of
15 the Association for the Treatment of Sexual Abusers.
16 That's our national organization that deals with this
17 particular kind of work.

18 For the South Carolina Chapter of the
19 association for the treatment of sexual abusers, I serve as
20 the secretary, so I am on that executive committee. I serve
21 in the executive committee of American Psychological
22 Association Division 41, which is American Psychology and
23 Law Society. I serve as -- on the executive committee of
24 APA Division 12, which is clinical psychology, the
25 assessment division of that.

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1 I'm a member of the American Academy of
2 Forensic Sciences, a number of organizations like that. I'm
3 also a member of the International Standardization Committee
4 for PPG standardization.

5 Q Have you published any peer review articles?

6 A Yes.

7 Q Have you presented at any conferences?

8 A Yes.

9 Q What, if any, of those were specific to the PPG?

10 A A fair number of them. I have 26 peer review
11 publications, and about six book chapters, and a lot of
12 presentations. In 2019 I published a paper in behavioral
13 sciences and the law, with colleagues from Canada, the
14 U.K., and the United States, where we've looked at the
15 PPG, the use of the PPG in courts across those three
16 countries.

17 In 2019, I, along with Dr. Donna Maddox, were
18 invited to present at the South Carolina annual Circuit
19 Court Judicial Conference. That was in Spartanburg. And we
20 gave a presentation called Science in the Courtroom, the use
21 of the PPG.

22 I have two book chapters on conducting sexual
23 behavior evaluations, in which I discuss the benefits of
24 using PPG in those evaluations. I have presented on the PPG
25 myself at a number of conferences this year, in 2021. I was

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1 accepted to present research findings on the PPG at the
2 annual conference of the American -- or the Association for
3 the Treatment of Sexual Abusers. I presented on the PPG
4 twice at American Psychology and Law, South Carolina
5 Association for the Treatment of Sexual Abusers, and the
6 American Academy of Forensic Sciences several times.

7 In addition, I'm regularly invited to present
8 lectures on sexual behavior evaluations to universities in
9 Canada. I have presented for state hospitals and Well Path
10 Facility in Massachusetts, University of Denver, Medical
11 College of Georgia, and several other things on the PPG.

12 Q How many PPGs have you requested in your career,
13 including private and SVP?

14 A I have requested, let's see, approximately 42
15 PPGs.

16 Q And how many of those were specific to sexually
17 violent predator cases?

18 A Thirty-one.

19 Q Thirty-one. And how did you become involved in
20 this particular case?

21 A So the Attorney General's office requested that
22 the sexual behaviors clinic and lab at MUSC conduct a
23 independent evaluation or a second opinion evaluation
24 regarding a precommitment evaluation for Mr. Williford.

25 Q What does your comprehensive -- comprehensive

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1 evaluation consist of?

2 A So consistent with best practices, we conduct a
3 comprehensive evaluation that includes data from multiple
4 sources. We use multimethods of testing. We are looking
5 at general psychopathologies, so symptoms of multiple
6 mental illnesses, personality characteristics, sexual
7 arousal, and try and assess those in multiple ways.

8 Q What is the -- the sexual behavior clinic's
9 laboratory, I'll call it SBCL, that you're the director
10 of, what does the SBCL's standard protocol in cases of
11 this nature?

12 A So our standard protocol consists of a thorough
13 review of all available collateral records. We conduct an
14 assessment of general psychopathology, personality
15 functioning, substance use, sexual functioning, and sexual
16 history, assessment of sexual arousal, scoring several
17 risk instruments that looks at risk factors from the
18 scientific literature, and conducting an extensive
19 clinical interview with the person.

20 Q So are you trained in the PPG?

21 A Yes.

22 Q What certifications do you have as a result of
23 this training?

24 A I am a licensed technologies certified clinical
25 analyst.

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1 Q And as a director, can you tell us what
2 certifications does the SBCL have regarding the PPG?

3 A Yes. Our clinic and lab has been certified by
4 Limestone Technologies as both a clinical and research
5 laboratory. The research certification is the highest
6 level possible.

7 Q Can you tell the Court why the PPG is a part of
8 SBCL's standard protocol?

9 A Yeah. So there's a couple different reasons.
10 And the PPG is used as one data point in our protocol. So
11 we know that sexual arousals due to nonconsensual or
12 abusive stimuli is a strong predictor of future sexual
13 recidivism.

14 We also know that people who are being
15 evaluated pursuant to the sexually violent predator act have
16 reasonable motivation for not being very forthcoming about
17 what they're sexually aroused by.

18 So if I had an examinee say, Yes, I am
19 currently very sexually aroused by this, I have acted on it,
20 I am currently fantasizing about it, that would be
21 different.

22 But it's pretty rare that we have somebody in
23 this type of evaluation be very forthcoming about their
24 sexual arousal.

25 And so in the spirit of doing a multimethod

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1 assessment where it is important to me that I am looking at
2 the same construct in multiple ways, I am going to ask them
3 about their sexual arousal, I am going to give them a
4 questionnaire that's going to assess their sexual arousal,
5 and I'm going to do a physiological measure of sexual
6 arousal, which is the PPG.

7 Q So what is the PPG, briefly?

8 A It's a physiological objective measure of male
9 sexual arousal. And it basically measures penile -- two
10 methods, so engorgement, so blood flow, in response to a
11 series of stimuli that are both sexual and nonsexual.

12 Q Has the PPG been peer reviewed?

13 A Yes.

14 Q Has there been publications about the PPG?

15 A Yes.

16 Q Do you know roughly how many publications do you
17 think there have been about the PPG?

18 A There have been at least a hundred publications
19 specific to abusive or illegal sexual behaviors, so people
20 have been convicted of sexual offenses. But it's also
21 really prevalent in the general sexual behavior
22 literature, looking at things like erectile dysfunction,
23 sexual health and wellness.

24 It's -- yes, so there's a lot of
25 publications. I guess I looked at what the most recent one

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1 was, and that was a peer review paper that was published in
2 Nature, which is a really, really high impact factor
3 journal. It was published June 8th of this year. And it
4 was in the general sexual behavior literature. They noted
5 that their findings demonstrated the PPG may be useful as a
6 non-invasive potential technique to evaluate penile erection
7 in men's health, giving the advantages, easy, low cost,
8 transportability, continuous data acquisition, and safety.

9 The findings of this study demonstrate that
10 PPG's signal dynamic can potentially be applied to clinical
11 penile hardness and erectile function.

12 THE COURT REPORTER: I am sorry. Could you slow
13 down?

14 THE WITNESS: Yes, sorry.

15 Do you want me to repeat that?

16 THE COURT REPORTER: Please.

17 THE WITNESS: Okay. So the findings from that
18 paper noted, These findings demonstrate that PPG may be
19 useful as a non-invasive potential technique to
20 evaluate penile erection in men's health giving the
21 advantages, easy, low cost, transportability,
22 continuous data acquisition, and safety.

23 The findings of this study demonstrate that PPG,
24 signal dynamics, can actually be applied to clinical
25 penile hardness and erectile function assessments.

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1 Q So thank you, Dr. Gottfried. How, does the PPG
2 work? Just briefly give us a --

3 A So generally, the examinee is sitting in a
4 private room by himself. He's given instructions how the
5 PPG works. He places a string gauge on his penis. That
6 is a really thin, flexible, stretchy band that he puts on
7 his penis by himself in a private room. Then while he's
8 by himself in a private room covered up, he's presented
9 with a series of audio or visual stimuli of sexual
10 situations between male adults, and adult women, adult
11 men, pre-pubescent children, teen-age children, and
12 comparing the arousal that the person demonstrates to the
13 consenting adult sexual scenarios to those of ones that
14 are abusive or illegal, and also presented with neutral
15 stimuli that are not sexual in nature. So we are looking
16 at changes of the circumference in response to those
17 stimuli.

18 Q So you are familiar with -- you were in the
19 courtroom when we talked about the case in the matter of
20 Bilton, and that quotes a U.S. Federal circuit case,
21 Weber. And they note in there, and I think it's
22 inaccurate, if you would please explain, is a person made
23 to sexually arouse or masturbate prior to taking the exam?

24 A No. I think that maybe that happened a long
25 time ago. Since I have been in this field, it is not

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1 allowed.

2 So if the person were to touch their penis or
3 touch the gauge during testing, it would mess up the test.

4 And because of the sensitiveness of the gauge, the
5 technician who is administering the test can see when the
6 gauge is being stretched and moved and things like that.

7 So they are not allowed to stimulate
8 themselves. So we certainly don't ask them to.

9 And so if somebody becomes aroused during a
10 particular trial, we wait for them to what's called
11 detumesce. So we're waiting for their penis to return to
12 flaccid, or where it started at baseline.

13 Q What quality controls -- excuse me, what quality
14 controls does the SBCL employ?

15 A Okay. So we have multiple quality controls.
16 One is that everybody in our lab is certified by
17 Limestone. They took the certification class, they have
18 the credential to do their part of it, whether it is the
19 administration of the test or the interpretation of the
20 data.

21 Each of the gauges that we use, we use a new
22 gauge for each test, each person, and the gauge is
23 calibrated on a five-step program before the test starts.

24 So the way the Limestone software works is
25 that you can't start a PPG unless the gauge is properly

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1 calculated. It won't even let you start it.

2 So we use countermeasures to make sure that
3 the administration is reliable. We do the countermeasures
4 and the tests in the same way for every examinee. So we do
5 a sound check to make sure that the sound is working, we
6 monitor the temperature and humidity in the room. We have
7 standardized instructions. We use the same test for
8 everyone, but we have standardized instructions. It's about
9 a ten-page document with a numbered list that the tech goes
10 through for every single person.

11 So we make sure, like, from administration to
12 analysis, that everything is being done the same
13 standardized way.

14 Q Talk a little bit about avoidance. How do you
15 determine if someone's trying to beat the test, I guess?

16 A So there are several ways that somebody could
17 try to manipulate the results of the test. They could be
18 moving in their seat. So sometimes we see somebody kind
19 of flexing, trying to have an erection to something that
20 they are not aroused by. We see sometimes movement when
21 the person is kind of squirming. We might see somebody
22 holding their breath. So we're measuring their -- they're
23 sitting on a countermeasure, which is a pad that's picking
24 up their movements. And then they are wearing a
25 respiration strap where we're looking at their breathing

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1 to see if it becomes irregular.

2 We have them press a button on a key pad on
3 their chair to indicate when that scenario became either
4 violent or sexual, so that they are demonstrating that they
5 are paying attention.

6 After some of the scenarios, the tech asks
7 them over the intercom to briefly describe the stories, so
8 that would test to see if they were paying attention.
9 Because somebody could use mental suppression, they could
10 just think about something else. And so those are ways that
11 we, we try to look at how valid the administration was.

12 Q Can you explain briefly what a cut score is?

13 A Yes. So when we interpret the data from the
14 PPG, there has to be a cut score, a clinical decision made
15 about what is significant and what isn't significant.

16 And so at MUSC, based on studies, based on
17 the literature, we use a very conservative cut score. So
18 all of the studies have shown that anything under ten
19 percent of a full erection isn't a valid way to look at this
20 test.

21 So approximately ten percent of a full
22 erection would be 2.5 millimeters of change. So where they
23 started at baseline and then increased, if they were aroused
24 the 2.5 millimeters of change.

25 However, we do a cut score of five. So we do

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1 a very conservative cut score for several reasons. We don't
2 want to have false positives. We don't want to say that
3 somebody is aroused by something that they are actually not.
4 So when you have a very high, conservative cut score, you
5 might miss some people. But this isn't the only data point
6 that we are using. So, we use five millimeters of change,
7 whereas other sites, such as Canada, uses one millimeter.

8 So that has been an issue when we are
9 working on the standardizations, because people use the test
10 for different things. If you are looking at it for
11 treatment progress, one millimeter of change might be
12 significant. But in a high stakes evaluation like this, we
13 don't want to get it wrong. That is why we use lots of data
14 points. And so that is why we use a conservative cut score.

15 Q Tell us, what's the difference internationally,
16 and you touched on it briefly, what else is the difference
17 internationally in standardization?

18 A So the biggest difference that we have come
19 across in standardization is that other countries have a
20 medical exception to their federal child pornography laws.
21 So we do not have in the United States, nor would we want
22 to use child pornography at MUSC.

23 So other countries for years have been using
24 nude images of children and other things that would be
25 illegal under federal law in the U.S., and that is what has

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1 worked for them. So they are reluctant to change what has
2 worked for them.

3 Through the international standardization
4 group that I work with, we have gotten the lab to add the
5 same stimuli that we are using, but they want to continue
6 using the child pornography as well. So that is one of the
7 biggest issues.

8 Q Now, you mentioned earlier, you said ATSA, which
9 I believe you said was the Association for the Treatment
10 of Sexual Abusers. What is that?

11 A So that is the national organization dealing
12 with people who both assess and treat people who have been
13 convicted or charged of sexual offenses or otherwise
14 engaged in inappropriate or illegal sexual behavior.

15 Q And does ATSA have practice guidelines?

16 A Yes.

17 Q And what do the ATSA practice guidelines state
18 about the PPG?

19 A So their most recent relevant guidelines were
20 the ATSA practice guidelines for the assessment,
21 treatment, and management of male sexual abusers. So they
22 published in 2014. They sent it to their entire
23 membership. You have to be a member to log onto the site
24 to download it online. And these are guidelines that you
25 are to supposed to follow. And if you are a member of

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1 ATSA, you can get sanctioned for not following the
2 guidelines.

3 So ATSA recognizes PPG as a useful tool in
4 both the assessment and treatment of adult men. So it is
5 mentioned multiple places in the guidelines, but they note
6 that -- they say members recognize that research-supported
7 assessment methods such as PPG may be useful for obtaining
8 objective behavioral data about the examinees that may not
9 be readily established through other assessment means,
10 exploring the reliability of the examinee's self-report.

11 They say members take reasonable steps to
12 obtain assurances that examiners using the PPG are
13 appropriately trained in the use of such methods, that they
14 use accepted methods, that they adhere to applicable
15 professional standards or guidelines such as the ATSA
16 guidelines.

17 I mean, really stress that people who use the
18 PPG recognize that it is not used as the sole criterion for
19 any decisions, and that you really should limit the use of
20 the PPG to assessing the examinee's sexual arousal and
21 preferences regarding age and gender, to evaluate the
22 examinee's arousal responses to various levels of sexually
23 intrusive or aggressive or course of behaviors, and
24 exploring the potential role of offense-related sexual
25 arousal in the examinee's sexually abusive or at-risk

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1 behavior and to develop treatment goals based on some of
2 that.

3 Q When would it be unethical to use the PPG?

4 A So it would be, per ATSA, and per me, it would
5 be unethical to use it as the sole data point. So it
6 would be unethical to say -- to use it as the sole data
7 point for anything.

8 It would also be unethical to take somebody
9 who has never been charged or convicted of a sexual offense
10 and see that it looked like they were aroused by children on
11 the PPG, and then say they have a disorder related to that,
12 or say that they are guilty of a crime.

13 The PPG doesn't tell you anything other than
14 what this person is aroused to in the lab today. So it
15 would be unethical to use that as data that somebody
16 committed a crime or something like that.

17 Q Do you recognize this book?

18 A Yes.

19 Q Can you tell us what this book is?

20 A Yes. That is published by the American
21 Psychiatric Association. That is the diagnostic and
22 statistical manual of mental disorders, and that is the
23 fifth edition that was published in 2013.

24 Q Published in 2013?

25 A Yes.

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1 MR. RUNYAN: May I approach, Your Honor?

2 THE COURT: Yes, sir.

3 BY MR. RUNYAN:

4 Q Dr. Gottfried, I have tabbed two sections in
5 pink there. If you would turn to the first one, and
6 please tell us what does the authoritative DSM tell us
7 about --

8 MR. THOMPSON: Will you tell us what page, please?
9 Page number?

10 MR. RUNYAN: Number of page. Sorry.

11 THE WITNESS: The first tab is on Page 686.

12 MR. THOMPSON: Sorry?

13 BY MR. RUNYAN:

14 Q Page 686.

15 A I'm sorry. Did you want me to read what you
16 have?

17 Q Yes, if you would, please.

18 A Okay. So this is Page 686. It says, The most
19 widely applicable framework for accepting the strength of
20 a paraphilia itself is one in which examinees' paraphilic
21 sexual fantasies, urges, or behaviors are evaluated in
22 relation to their normophilic sexual interests and
23 behaviors. In a clinical interview, or an
24 self-administered questionnaires, examinees can be asked
25 whether their paraphilic sexual fantasies, urges, or

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1 behaviors are weaker than, approximately equal to, or
2 stronger than the normophilic sexual interests and
3 behaviors. This same type of comparison can be and
4 usually is employed in psychophysiological measures of
5 sexual interests, such as penile plethysmography in males
6 or viewing time in males and females.

7 Q And penile plethysmography, that is the PPG?

8 A Correct.

9 Q Okay. If you can just tell us what the next
10 page is. I'm sorry, I didn't write it down.

11 A The next tab is on Page 699.

12 Q Page 699. If you would just read the
13 highlighted passage. If you need me to come show you, I
14 can.

15 A Yes. I see. This is under the subheading,
16 Diagnostic Markers. It says, Psychophysiological measures
17 of sexual interests may sometimes be useful when an
18 individual's history suggests the possible presence of
19 pedophilic disorder, but the individual has denied strong
20 or preferential attraction to children. The most
21 thoroughly researched and longest used of such measures is
22 penile plethysmography, although the sensitivity and
23 specificity of diagnosis may vary from one site to
24 another.

25 Q Thank you.

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1 Another book here, Dr. Gottfried, are you
2 familiar with this book?

3 A Yes.

4 Q And what is this book?

5 A That is the -- it's the evaluation of sexual
6 violent predators. And that's part of the best practices
7 in forensic mental health assessment series books.

8 Q And does it -- well, when was it published?

9 A That was published in 2009.

10 Q So it was published four years prior to the
11 updated DSM-5?

12 A Yes.

13 Q Does it say anything about the PPG?

14 A Yes.

15 Q What does it say?

16 A So generally it's unsupportive of the PPG, but
17 that was based in very large part of an article that was
18 published in 2006, authored by Bill Marshall.

19 However, in 2014, Bill Marshall published an
20 article that was much more supportive of the PPG. In 2019,
21 there was a meta-analysis, which is a study that includes,
22 in this particular study, data from 53 studies of
23 approximately, I believe, almost 10,000 men looking at the
24 PPG. And so that resolved a lot of the issues that were
25 noted in that book. And so since 2009, there's been a lot

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1 more research published on the PPG.

2 Q So much so that the DSM-5 published in 2013
3 includes positive information about the PPG?

4 A Correct.

5 Q Just going on. Dr. Gottfried, are you familiar
6 with this book, and could you tell us what it is?

7 A Yes. That is Sexually Violent Predators
8 Clinical Science Handbook, that I believe was published in
9 2019.

10 Q And what is specific about this book related to
11 PPG that is, you know, relevant?

12 A So Chapter 15 of that book is entitled, The Use
13 of Penile Plethysmography in SVP assessment and treatment
14 decision-making. That was written by Joseph Plaud.

15 And in that chapter he says that the use of
16 the PPG is important in both the evaluation and treatment of
17 sexual offenders being considered for SVP commitment because
18 the identification of deviant sexual arousal has been found
19 by researchers to be a significant predictor of sexual
20 offense recidivism, and it has a role in both diagnosis and
21 treatment decisions.

22 Q In your opinion, is the PPG generally accepted
23 in the mental health community?

24 A Yes.

25 Q And could you give us some examples of, you

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1 know, why you think that?

2 A So it is in the DSM-5. It is supported by the
3 Association for the Treatment of Sexual Abusers. It --
4 the system that we use, the Limestone Technologies' PPG
5 hardware system that we use has been approved by the FDA.
6 The PPG is recognized as a medical test by Blue Cross/Blue
7 Shield and Medicare.

8 So it is -- to me that would be general
9 acceptance that it's mentioned by authoritative sources and
10 recognized in the literature and the authoritative sources.

11 Q So let's talk briefly, what are some issues with
12 the PPG?

13 A So there has historically been some problems
14 with standardization. And so as a member of the
15 International Standardization Group, I worked with other
16 researchers and clinicians who used the PPG from Canada,
17 the U.K., and the Czech Republic. And we are really
18 trying to work on this issue.

19 And so one issue is that some authors of
20 literature say that offenders don't show expected arousal
21 patterns on the PPG. And so this is expected for a couple
22 different reasons.

23 So there's some studies that say, Look,
24 these, quote, child molesters didn't show sexual arousal to
25 children. But we know that people sexually offend against

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1 children for multiple reasons. And sexual interest in
2 children is not always one of them. So we would expect that
3 some people who offended against children are not actually
4 sexually aroused by them.

5 The better way to conduct that kind of
6 research is to have people who are seeking treatment who are
7 sexually aroused by children and compare them to people who
8 have no known sexual arousal to children, and compare them
9 on that.

10 Also, it is difficult to produce stimuli that
11 people who -- that men adult -- who rape adult women and are
12 aroused by coercion, it is hard to reproduce that, what they
13 find arousing, in the lab. So some of the studies show it
14 doesn't work as well for that population, because there's
15 something about that arousal that is more difficult to
16 reproduce in a lab than it is sexual arousal to children.

17 But in my opinion, when we see sexual arousal
18 in men who rape adult women and show arousal or preference
19 for coercion, when we do observe that in the lab, that is
20 important because it's difficult to replicate that in the
21 lab.

22 Additionally there have been studies that
23 look at self-reported arousal, so answering questionnaires
24 or reporting to an investigator what they are aroused by.
25 And then looking at the consistency of what is shown on the

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1 PPG, and that is done both in men -- and women with
2 photovaginal plethysmography. And they have really high
3 concordance rates where you are looking at self-reported
4 arousal versus PPG results.

5 So additionally -- so there have been these
6 issues, but in 2019, I mentioned this meta analysis. So it
7 was published in 2019. It included data of men from 53
8 studies. So that was almost 9500 men. And they addressed a
9 lot of the standardization issues. They looked to see what
10 was better, showing someone a video, showing somebody --
11 presenting the material through audio, or showing them
12 slides, or a combination.

13 They talked about interpretations using
14 standardized U scores, and basically showing that the
15 predictive effect sizes were strong or stronger than most
16 known risk factors for sexual recidivism.

17 Q Could you tell the Court what specificity and
18 sensitivity is?

19 A Yes. So sensitivity is true positive. So what
20 that means is -- I'm going to use the example of somebody
21 being aroused by children. So sensitivity would be
22 someone is aroused by children and the PPG shows that they
23 are aroused by children. That's a true positive.

24 Specificity is a true negative, where the
25 person is not aroused by children and the PPG shows that

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1 they are not aroused.

2 I find that giving an example with COVID is
3 helpful in demonstrating. Would that be okay if I give an
4 example?

5 Q Please.

6 A Okay. So when you think about specificity and
7 sensitivity as it relates to COVID, so sensitivity would
8 be having COVID and the COVID test being positive.

9 Specificity would be not having COVID and
10 your COVID test is negative. So for any test anywhere for
11 anything, you have to balance. If you want more false
12 negatives, or false positives, that the person doesn't COVID
13 but they actually test positive. So, when you are thinking
14 about a COVID test and how you want to balance that risk of
15 the false positives or negatives, if we had more false
16 positives, then we are risking people having to quarantine
17 but they are not actually sick.

18 But, on the other hand, if we have more false
19 negatives, then we're likely exposing people who are sick
20 out in the community, but they don't know that they are
21 contagious because they tested negative.

22 So for the PPG, the reason that we use the
23 conservative cut score is because we would rather have more
24 false negatives.

25 So, for example, we would rather the PPG show

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1 that they are not aroused by children when they actually
2 are, than the opposite. Because, as I mentioned, these are
3 really high stake evaluations and we use multiple data
4 points. And so that is the importance of balancing that and
5 using the very conservative cut score.

6 Q So specifically, what stimulus test do you use?

7 A We use two different stimulus tests. So one
8 developed by Bill Marshall, we use the Marshall Test. And
9 then we use the Real Child Voices that was developed by
10 Bill Burke and his colleague.

11 Q And how many labs currently use the real child
12 voices?

13 A So the real child voices, that comes standard
14 when anybody buys a Limestone Technology PPG hardware set.
15 So we know how many labs have purchased that hardware, but
16 we don't know if they are actually using it. So it's
17 about 50 to 100 labs are using RCV. And then specific to
18 sexually violent predator programs, the SVP programs in
19 Minnesota, California, New York, Illinois, and Missouri,
20 all use the Real Child Voices.

21 Q Now, the Real Child Voices, you mentioned it
22 comes in the package with the Limestone machine?

23 A Yes.

24 Q Are the images standardized to that machine?

25 A Well, yes. I mean, the images are part. So the

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1 RCV is what's called slides plus audio. So the whole
2 thing comes standard when you purchase that. Each of them
3 have an image associated with what you are about to hear,
4 then you hear the stimuli verbally, and then you see
5 another image.

6 Q So what is the Marshall set?

7 A So the Marshall is older. It was developed by
8 Bill Marshall. It's a monotone male voice. It is
9 actually Bill Marshall's son at the time, still his son,
10 but that's when he made it. He had his son narrate it.
11 It is a monotone male voice describing sexual situations
12 with himself and pre-pubescent children, adolescent
13 children, consenting adults, abuse against adults, and
14 neutral stimuli.

15 Q And explain how the RCV is different and similar
16 to that.

17 A So whereas the Marshall is audio only, the RCV
18 is slide plus audio, which that 2019 meta analysis found
19 was the preferred, most valid way to administer a PPG.

20 Instead of hearing the monotone male voice,
21 you hear multiple voices. So you hear the narrator, you
22 hear children's voices, women's voices. There is one child
23 where they are in a bar and you hear glasses clinking, you
24 hear background noises.

25 Q Can -- excuse me, can these stimulus sets, both

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1 the Marshall and the RCV, can they be tailored to the
2 offending pattern?

3 A Yes. So, for instance, for the Marshall,
4 there's a full set that is just adult women, so consenting
5 adult women, and then rape against an adult woman. So
6 Mr. Williford only got that set, because we were just
7 looking at the adult women trials. Whereas the RCV
8 includes everything. But that could be tailored.
9 Although that is something we more recently started doing.
10 So Mr. Williford got the whole RCV set.

11 Q Why do you use both?

12 A So the Marshall has been around a lot longer.
13 When I started at MUSC, the RCV was newer. It had not
14 been subjected to as many studies as it has now. And this
15 was well before the meta analysis came out. So we weren't
16 sure if the images or using the slide plus audio was
17 different than using the audio only. And so multiple
18 method assessment, we want to look at this in multiple
19 different ways.

20 Q So are you -- I'm sorry. Has RCV, the Real
21 Child Voices, has it been peer reviewed?

22 A Yes.

23 Q And?

24 A So the RCV has been mentioned in several peer
25 review publications. So when they were developing it,

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1 they did a study that they called the super normal study
2 where they looked at people with no known offenses or
3 arousal to children, and looking at those results compared
4 to the Marshall. So that was published, I believe, in --
5 not all of the results of that study, but it is described
6 in -- I am sorry -- in the International Review of
7 Psychiatry in 2019.

8 And then the actual studies of the RCV, Wall,
9 those studies are being written up for peer review and
10 publication. They have been subjected to peer review
11 through national scientific organizations for their
12 conferences.

13 So when you submit a talk or a presentation
14 at one of these conferences, they have peer review
15 committees that I also serve on. Because, first of all,
16 there's not enough room in the program to let everyone
17 present. And second of all, they want to make sure that
18 what is being presented is scientifically sound.

19 So it's been presented, RCV, a lot of times
20 at different scientific conferences including the research
21 and treatment conference of the Association for the
22 Treatment of Sexual Abusers. It -- the American Academy of
23 Forensic Sciences, IASR, which is International Association
24 for Sex Research. So multiple conferences, scientific
25 conferences.

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1 Q Are you familiar with the 2014 article by W.L.
2 Marshall who, as you testified, is the inventor of the
3 Marshall set?

4 A Yes.

5 Q And so, what does that article say?

6 A So this is -- I mentioned this article when you
7 asked me about the best practices book, because they cite
8 an article from 2006 in which she was criticizing the PPG.
9 But then he published an article in 2014, where he
10 discusses some of the issues of standardization. But he
11 notes, quote, Despite these reservations, telemetry, which
12 is PPG or -- he also provides, Remains the best approach
13 to establishing a sex offender's sexual interest. And so
14 as long as the resulting data are interpreted with
15 caution, they can usually contribute to risk assessment
16 and to defining targets for treatments.

17 He also noted, quote, Despite these
18 reservations, it is possible to attempt integration of data
19 across sites.

20 And what this integration revealed is that
21 the results of child molesters appear reasonably consistent
22 in showing that some, but far from all, of these offenders
23 displayed deviant arousal that requires treatment
24 intervention."

25 And he noted, Overall the data suggests some

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1 value to phallometric assessment, but caution in the
2 interpretation of results is recommended.

3 Q So moving on to Mr. Williford specifically, when
4 was his evaluation?

5 A So we saw Mr. Williford twice in February of
6 2020. He had the PPG, I believe, the 10th of February
7 2020. And then there was a delay in the detention center
8 being able to transport him because of COVID precautions
9 and things, so then we completed his evaluation in April
10 of 2020.

11 Q And do you require consent?

12 A Yes.

13 Q And what is that procedure?

14 A So when the examinee, the first time that
15 they're in the lab, they go over a pretty long consent
16 form. It is five to six pages, depending on how they
17 print it. But it goes through every test that the person
18 may be asked to take. They sign or they initial next to
19 each test. They have an opportunity to ask questions. If
20 the person hasn't spoken with their lawyer and they're
21 hesitant, I give them an opportunity to call their lawyer
22 if they want to.

23 So once they have had all of their questions
24 answered, then they sign an overall consent form. And then
25 on each subsequent day of the evaluation, they are given a

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1 chance to re-review the consent form, ask any questions that
2 they have, and then they sign what we call a re-reading of
3 that consent form on each subsequent appointment.

4 Q And on Mr. Williford's occasions, when he came
5 to MUSC, did he consent?

6 A He did.

7 Q Can you tell the Court why it's necessary to do
8 the PPG in Mr. Williford's case?

9 A Well, so for all of the reasons that I mentioned
10 before. It's another data point. And for Mr. Williford,
11 specifically on every test that he was administered, there
12 was indication of defensiveness or deception or him not
13 being really forthcoming.

14 He denied all of his sexual offenses, even
15 the ones that he had pled guilty to. He denied arousal. He
16 wasn't forthcoming in really reporting what he was aroused
17 by.

18 Current fantasies of masturbation, habits.
19 And so he really provided inconsistent information between
20 my evaluation and the Department of Mental Health's
21 evaluation, and between days of my evaluation.

22 So in addition to the reasons that I
23 mentioned that I used the PPG, it was also important because
24 I didn't think that he was coming -- he was forthcoming with
25 the information.

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1 Q Will your opinion be solely based on the PPG
2 results?

3 A No.

4 Q Thank you, Dr. Gottfried. Please answer any
5 questions Mr. Thompson may have.

6 MR. RUNYAN: And, Your Honor, I would like to
7 reserve Dr. Gottfried for rebuttal, if necessary.

8 THE COURT: Yes, sir. All right. Mr. Thompson.

9 MR. THOMPSON: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MR. THOMPSON:

12 Q Let me just start out, Doctor, with can you not
13 do an evaluation without using a PPG?

14 A Can you not do one?

15 Q Is it possible to do one without a PPG?

16 A So it's part of our standard battery. I believe
17 there has been one case referred by the Attorney General's
18 Office where we did not do one because, I guess, the Court
19 said that the person did not have to comply with the
20 evaluation, and there was just a ton of data in that case
21 so really supported the diagnosis. So it has been done
22 before, but it is a standard part of our evaluation.

23 Q Standard for your evaluation?

24 A Yes. For the sexual behaviors clinical lab.

25 Q Okay. Does the Department of Mental Health use

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1 PPG for evaluations?

2 A I have seen PPGs in their reports, but I don't
3 know. I don't know if they -- they don't use it all the
4 time, not in all of their reports.

5 Q If you were told you could not use the PPG,
6 could you do an evaluation?

7 A No. I mean, I developed the protocol as the
8 director of the clinic and lab, so I wouldn't take it out.
9 And if I went somewhere where they said I couldn't use it,
10 I wouldn't -- I likely wouldn't take that job.

11 Q So, in other words, if down the road our courts
12 say it is not admissible in court, you'd be out of a job?

13 A I would still use it.

14 MR. RUNYAN: Objection, Your Honor. That's
15 speculative.

16 MR. THOMPSON: Well, she just testified she --

17 THE COURT: Rephrase your question.

18 BY MR. THOMPSON:

19 Q If you were not allowed to use the PPG as
20 testimony in court, could you do an evaluation?

21 A I don't know if this would be allowed, but my
22 plan, if that were to happen, is to still administer a PPG
23 and still use that as a data point.

24 Q Now, you said in this case you used the PPG
25 because in all of the other tests there was evidence of

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1 deceit or manipulation?

2 A That was one of the reasons. So I used it
3 because it's part of my standard battery, because I think
4 it is -- those data are useful because it is part of my
5 multimethod assessment. And especially for Mr. Williford,
6 I didn't think that he was coming -- he was forthcoming on
7 the other ways that I tried to assess sexual arousal.

8 Q Do you have the report that you filed?

9 A Yes.

10 Q Did you do a Conners Continuous Performance
11 test?

12 A Yes.

13 Q And if you'd take a look at that, I'm on
14 Page 28.

15 A Yes.

16 Q Now, what does that test do?

17 A So that is looking at attention. So this was a
18 test that I would give to make sure that the person was
19 going to be able to sustain their attention for the large
20 battery of psychological tests I was about to administer.

21 Q Okay. And on that test you indicated in your
22 report, did you not, that Mr. Williford did not have
23 indication of validity issues.

24 A You are correct. So on that one -- but I guess
25 the way that I'm thinking about defensiveness is the

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1 ques -- the ones that he was answering questions. So this
2 was a performance-based test.

3 Q Okay. The Substance Abuse Simple Screening
4 Inventory, did you do that?

5 A Yes.

6 Q And it did indicate that he had a high
7 probability that he had a substance abuse disorder; is
8 that correct?

9 A Yes. So from that test there was significant
10 evidence of defensiveness. That was one of the tests that
11 I thought he wasn't being very forthcoming on.

12 Q And did you do a Personality Assessment
13 Inventory?

14 A Yes.

15 Q And I believe you'll find in that, were that his
16 profile was entirely within normal limits, no evidence of
17 significant problems with unusual thoughts or experiences;
18 is that correct?

19 A Well, that is because I noted that that test
20 should be interpreted with caution because he appeared to
21 present himself in an overly favorable light and was being
22 defensive.

23 Q What about the Abel Assessment for Sexual
24 Interest, did you do that?

25 A Yes.

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1 Q Now, it cannot be used to determine guilt or
2 innocence in a specific sexual offense, can it?

3 A No test should be used for that.

4 Q Well, if it can't be used, why did you employ
5 it?

6 A There's no question about guilt or innocence.

7 Q I'm sorry. I'm having trouble hearing through
8 the plastic.

9 A I have no question about guilt or innocence in
10 this kind of case.

11 Q I'm sorry. I'm still having trouble hearing
12 you.

13 A It is not a pretrial case, so I didn't have any
14 question about guilt or innocence.

15 Q Okay. Well, this is a case to determine, based
16 on forensic evaluation; is it not?

17 A That's correct. But the Abel would not be --
18 you wouldn't want to use those data to say like, Yes, the
19 person committed this crime. That is what they are
20 saying.

21 Q But even in that case, I believe you indicated
22 that his score was non-problematic on his distortion,
23 cognitive distortion score; is that correct?

24 A Yes. That is looking at people who have high
25 distortions or thinking errors that are similar to people

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1 who molest children.

2 Q Now, you did say he had -- was highly
3 problematic on social desirability score?

4 A Yes. That is one of the -- that is the validity
5 score that I'm talking about on Abel specifically.

6 Q And that score simply indicates a person's
7 unwillingness to admit to common violations of ideal
8 social behavior. And you've got in here, such as being
9 impatient; is that correct?

10 A Yes. And so the next line is, A high score may
11 indicate an inability to be truthful with other people.

12 Q What about the danger registry, did you do that?

13 A It's part of the Abel.

14 Q It's part of the Abel?

15 A Yes.

16 Q And you indicated there were no moderate
17 concerns, right?

18 A So, that is looking at the person's self-report
19 of whether they fantasize about teenagers or children,
20 whether they masturbate to them, whether they are
21 targeting a child. So all of the tests you have mentioned
22 so far, those are all based on self-reports.

23 Q As I say, you indicate there were no moderate
24 concerns or no severe concerns.

25 A He has none, because he is the one completing

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1 this test.

2 Q What about the Harris Psychopathy Checklist?

3 A That is a clinician-rated, so I scored that
4 measure based on my clinical interviews with him and my
5 review of collateral information.

6 Q All right. And in that you indicate that he did
7 not meet criteria for psychopathy.

8 A So, for the PCLR, the Harris Psychopathy
9 Checklist revised, I noted that he scored one point below
10 the clinical cutoff for meeting that definition of
11 psychopathy.

12 Q So if you have got all of these tests that don't
13 indicate anything, why did you need to do the PPG?

14 A Sorry, I missed the last part. All of these
15 tests that don't --

16 Q All these tests we just went over that don't
17 indicate any problems, why did we need to do the PPG?

18 A Well, I wouldn't say that the tests don't
19 indicate any problems. So in my multimethod assessment
20 I'm looking at a variety of things. So the -- none of
21 these tests, with the exception of the self-report on the
22 Abel look at sexual arousal or sexual interest. So the
23 PPG is one of the ways that I measure sexual arousal, in
24 addition to their self-report and looking at offense
25 behaviors.

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1 Q Now, the lab that you are doing work for, what
2 is the name of the lab?

3 A The Sexual Behaviors Clinic and Lab within the
4 Department of Psychiatry at MUSC.

5 Q Okay. And I believe you said it is a clinical
6 and research laboratory; is that correct?

7 A It's our clinic and lab, and we do both clinical
8 and research, correct.

9 Q How much of it is research?

10 A It's difficult to quantify that. So it's a
11 clinic, and then we use the data that we collect in that
12 clinic to conduct research. So sometimes we get a grant
13 to do research that isn't from the evaluations that we
14 conducted there. But it's mostly a clinic, and then we
15 analyze those data.

16 Q So is that one of the reasons you did a PPG in
17 this case, to do research?

18 A No.

19 Q And where were you trained?

20 A Where was I trained?

21 Q On PPG.

22 A Oh I was trained -- I have a certification from
23 Limestone Technologies.

24 Q And what is Limestone Psychopathy?

25 A Technologies.

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1 Q Technology, I'm sorry.

2 A So that is the company in Canada that makes the
3 Limestone hardware and some of the software.

4 Q All right. And what certifications do you say
5 you have?

6 A I'm a certified clinical analyst.

7 Q Are you certified to -- as an analyst I assume
8 you are saying you are certified to interpret the
9 information; is that correct?

10 A That is correct.

11 Q Are you actually certified to give the test?

12 A Yes. So that was part of the training program.
13 So you had to be able to give the test to be able to do
14 the interpretation.

15 Q Now, when we talked about the difference
16 between -- talked about the difference between the
17 Marshall and the Real Child Voices --

18 A Yes.

19 Q -- and I believe you actually said that Marshall
20 had some paper where he expressed reservations about his
21 own test; is that correct?

22 A About the PPG in general. He made some stimuli
23 for it. Over the years he has published articles both
24 criticizing and supporting the PPG. He is currently long
25 retired, but one of the last papers that he wrote in 2014

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1 was the one that I quoted a couple of minutes ago, that
2 was much more supportive of the PPG in light of more
3 recent research and literature.

4 Q All right. Has there been articles concerning
5 Real Child Voices that supported the Real Child Voices?

6 A Yes. So the paper in 2019 in International
7 Psychiatry Report -- that might not be the exact name of
8 the journal -- that discussed the super normal study that
9 was used to develop the PPG. It's been mentioned in
10 several peer reviewed papers. And then myself and some
11 colleagues in Canada independently have presented on data
12 from the Real Child Voices, comparing that to the child
13 pornography that they use in Canada and the Marshall test
14 that we use at MUSC, and presented that at multiple
15 national or international scientific organizations annual
16 review research conferences.

17 Q Have there also been papers where the Real Child
18 Voices has been criticized or questioned?

19 A Not that I'm personally aware of.

20 Q So everybody is on board with the Real Child
21 Voices, no question?

22 A To my knowledge. I have not seen any critiques
23 of the Real Child Voices itself.

24 Q Now, the PPG is being used, and there is a lot
25 of times that in your answers to questions you kept

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1 talking about child molesters used it. We are not talking
2 about child molesting in this case, are we?

3 A No. Mr. Williford has an offense that included
4 a child when he was a juvenile, but the majority of his
5 sexual offenses have been rapes against adult women.

6 Q But he hasn't been convicted or any allegations
7 made about being a child molester as an adult; is that
8 correct?

9 A That's correct.

10 Q And you said that the test can be tailored to
11 the case?

12 A It can be, yes.

13 Q Why didn't you tailor it to Mr. Williford's case
14 to take out the child molesting part?

15 A So as I indicated on direct, that's what was
16 done to the Marshall. So the Marshall, you tailor it, you
17 know if they had both adult victims and child victims, the
18 tests would be much longer because you would tailor it for
19 those scenarios.

20 The RCV includes everything. It's about the
21 same length as the Marshall, but it includes everything.
22 And so, more recently, because when I'm writing the report
23 or kind of formulating my opinions, the fact that they are
24 aroused by children is less meaningful to me if there's no
25 indication the person has a pedophilic disorder.

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1 So in light of that, more recently, I have
2 been taking out the child scenarios for people who only have
3 known adult victims on the RCV. But that is something, as I
4 mentioned, that started more recently.

5 Q So you are saying the Real Child Voices cannot
6 be tailored to a specific situation?

7 A No, it can. It wasn't for Mr. Williford, but it
8 can.

9 Q Okay. Throughout the country, and you have
10 talked about England and Canada, throughout the history of
11 PPG, is there a standard set of pictures that's shown to
12 everybody who takes it?

13 A Most labs don't use pictures at all. It is
14 typically audio or video or image in picture slide plus
15 audio.

16 Q Okay.

17 A So for the Real Child Voices, that's what comes
18 standard, and the images come standard with that hardware.

19 Q Is there a standard set of audio that is used
20 throughout the country?

21 A So when somebody purchases the Limestone
22 Technologies PPG hardware, the Real Child Voices is the
23 software that comes with it. So there are 50 to 100 labs
24 that use that.

25 Q But is that standard throughout the country?

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1 A No. So it's difficult to know what every lab is
2 doing. So we are trying to collect those data, as our
3 other researchers, to see what everyone is doing. And
4 that is one of the major goals of the international
5 standardization group that I'm a part of.

6 Q How are you associated with Limestone?

7 A I purchased their system. But otherwise, not
8 affiliated with Limestone.

9 Q You don't have any financial interest in them at
10 all?

11 A No.

12 Q Now, you said that it can be influenced by many
13 factors, the results -- squirming in the chair, I believe
14 you said, holding your breath, things like that. You can
15 manipulate the test; is that correct?

16 A Those could represent attempts to dissimilate or
17 purposefully manipulate test results. They're not always
18 successful, but that is something that someone can do,
19 which is why we use the countermeasures to look at that.

20 Q Is that one of the problems that has been
21 associated with PPG in the past, the fact that it could be
22 manipulated and it could have false positives or false
23 negatives?

24 A The literature that I'm familiar with is more
25 discussing of the false negatives, that you might miss

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1 someone. And to me that's less of a problem. We
2 typically do not observe false positives on the PPG. It's
3 really unlikely to become aroused or to make yourself or
4 be aroused by something that you don't actually find
5 sexually arousing. It's more likely that we would miss
6 something. So I think that's discussed more in the
7 literature, and that is one of the reasons why we employ
8 those countermeasures.

9 Q Once you do a PPG test on an individual, is that
10 it, or do you attempt to replicate that test on that same
11 individual to make sure you're getting a valid response?

12 A Are you asking do we give it to them multiple
13 times?

14 Q Yes.

15 A No. So they take the Marshall test and they
16 take the RCV test, which feature the pre-pubescent,
17 teen-age, adult victims in those trials. We also -- I go
18 over the test results with all examinees to see what they
19 make of their test findings, and see if they have anything
20 they want to add to that.

21 Q Well, isn't one of the -- hold on, I can't find
22 the word I'm looking for -- one of the factors of
23 scientific testing, the fact that something can be
24 replicated?

25 A In talking about like test REPAS reliability?

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1 Q Yes.

2 A Yes. That is one of the reliability factors in
3 test construction.

4 Q But there is no attempt to replicate a test
5 in -- this PPG test on individuals?

6 A We don't do multiple PPGs on the same
7 individual. We do the two sets, so it is about 27 trials
8 of the Marshall and maybe 24 of the Real Child Voices.
9 But that's it. We don't bring them back another day to do
10 it again.

11 Q Has there ever been a margin of error calculated
12 for PPGs?

13 A I mean, I think that the margin of error is
14 specificity and sensitivity. And, yeah, definitely, it is
15 looked at a lot in literature.

16 Q Well, specificity -- I can't say it.

17 A Sensitivity and specificity.

18 Q And sensitivity. How does that equate to a
19 margin of error?

20 A Well, so that's false positives and false
21 negatives. So to me, that is one of the definitions of an
22 error.

23 Q But one of the problems, I believe you testified
24 to in the past, is that it can be manipulated, you can get
25 false negatives?

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1 A Yes. All tests can theoretically be
2 manipulated. That is why we look at cut scores and we try
3 to balance specificity and sensitivity with that test.
4 Any test you have an issue like that.

5 Q But if you've got a problem with false
6 negatives, and you don't know that is a false negative
7 because you haven't done repeated testing, how do you know
8 a margin of error?

9 A I'm not sure I am following your question.

10 Q Well, you say the sensitivity and specificity
11 are the margin of error. But in the -- you said in the
12 past one of the problems with PPG is that you could get
13 false negatives, right?

14 A Correct. That is -- well, by design, because we
15 want to minimize false positives. So that's why we use
16 the conservative cut score.

17 Q If you don't do repetitive testing, how do you
18 know that's a false negative?

19 A Well, there is nothing to suggest that if it was
20 a false negative it would come on repeated testing. So
21 some people, they might be trying to suppress that in
22 their minds, they might, you know, not be listening. They
23 might be nervous in the lab and just can't have arousal to
24 anything. Any of those things could account for a false
25 negative.

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1 Q So if you can't determine that it is a false
2 negative, how can you calculate a margin of error?

3 A I'm still not following. So margin of error is
4 how accurate a test is, right?

5 Q That's right.

6 A So that is what specificity and sensitivity is.
7 And so that is calculated. There are a lot of studies
8 looking at PPG and the specificity and sensitivity.

9 Q Quality control procedures, let's talk about
10 that for a minute. I believe you said everybody at the
11 lab is certified?

12 A Correct.

13 Q A new gauge is used for each person, it's
14 calibrated at the start of the test?

15 A Yes.

16 Q And there's standardized instructions?

17 A Correct.

18 Q Do those standardized instructions tell how to
19 show the pictures, what order to show the pictures in, how
20 to play the audio, what order to play it in?

21 A Yes. I mean, they are played in order as the
22 set of the trial that comes with the machine. So the test
23 -- in the instructions, once the person due to methods or
24 comes back to baseline, then, yes, the instructions
25 instruct them to play the next trial, which is in the same

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1 order.

2 Q All right. What do those voices say?

3 A Can you -- what do you mean?

4 Q Well, is it just like you and I talking here, or
5 are they saying something sexual?

6 A Well, I mean, they are sexual scenarios.

7 Q They're sexual scenarios.

8 A Correct.

9 Q And sexual scenario also involving children, the
10 voices?

11 A Yes.

12 Q For those that are shown the picture and the
13 voices, and I assume -- maybe I'm making an assumption
14 that is wrong -- but those that have picture and voice, is
15 the picture shown at the same time that the voice is
16 played?

17 A No.

18 Q It's played differently?

19 A Yes. So the Real Child Voices is what's called
20 slide plus audio presentation. So for each of the trials
21 they are shown a picture or a series of pictures that is
22 going to prime them to the gender and the age of the audio
23 material they are going to hear. So they see the
24 pictures, and the pictures -- so once you press play, the
25 pictures flash on the screen. After the pictures, then

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1 the audio starts. Once the audio is concluded, then the
2 pictures are shown on the screen again. So that's how it
3 is for almost all of the Real Child Voice set.

4 Q And you just used the word, it's primed, that it
5 shows the picture. In other words, you're expecting a
6 reaction?

7 A No, no, it is showing them that it is a girl's
8 voice. All -- I believe all of the scenarios the child
9 identify their age in the audio material. So if it is
10 going to be a trial about a six-year-old girl at a
11 swimming pool, then the image would be a six-year-old girl
12 in a bathing suit that you would see before hearing. So
13 when I say "primed," I mean it is showing you the gender
14 and the age that you are about to hear.

15 Q Now, between scenarios, how much time lapses
16 between scenarios?

17 A So that is up to the tech. So the tech is
18 watching the penile gauge. And so if the person became
19 aroused, the tech has to wait until the person returns to
20 baseline.

21 Q So that is not standardized then?

22 A Well, I mean, it is standardized in the
23 instructions of how -- I think all labs do that. So you
24 wouldn't want to start a new trial with the person having
25 an erection, because then you wouldn't be able to tell

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1 what caused it. So you always record where it starts at
2 the baseline, at the very start of the test, and then what
3 the baseline is for each of the trials.

4 And so if somebody was aroused, frequently
5 once they're not presented with anymore stimuli we see that
6 arousal go down. Sometimes it persists, so then the test is
7 instructed to have the person do math problems in their
8 head, to count backwards. There are techniques in the
9 literature to try to promote detum methods, but you would
10 never start a new trial until the person was detumesced to
11 baseline.

12 Q Okay. Is there any way -- I mean, I realize
13 what you're saying, you don't start until they're at
14 baseline. But is there any other way of -- of identifying
15 the fact that what you've just showed is not carried over
16 into the next scenario?

17 A No, just the person measures themselves, the
18 circumference of their penis before they get started.
19 That is how the gauge size is selected. The gauge is then
20 calibrated to make sure that it is that size so we know
21 what size of the gauge is, so then that should be right
22 around where the baseline is, where they start.

23 So we want them to return to the baseline
24 before.

25 Q We are all adults here, and I'm trying not to

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1 get crude. Okay? But I'm going to ask the question. If
2 you put me on a test and you throw a naked woman up there,
3 looking at me, and you have her say something in my ear
4 sexual, and I get aroused from it, you wait until the
5 erection dies down, then you throw up a 15-year-old girl,
6 and she says something, and I'm aroused again; is it not
7 possible that I reached mentally a level of arousal from
8 the woman that is carried over to the child?

9 A I suppose that is possible, but I mean the way
10 it is instructed in the literature and the way that we
11 have always done it, is you have the person detumesce. I
12 mean, additionally showing sexual arousal to a teenager is
13 not pathological. That would be expected as well.

14 Q Now, when did Dr. Burke come up with this Real
15 Child Voices; do you know?

16 A We began using the Real Child Voices around 2010
17 at MUSC. I don't know offhand the year that he finished
18 making that set. I mean, I could probably find it in an
19 article if you would like me to look, that I have with me.

20 Q And you may not know this, but I believe he
21 himself, in a newspaper interview, said some of the courts
22 consider it to be voodoo practices. Is that right?

23 A That, I don't know.

24 Q Okay.

25 A The paper that we wrote for Behavioral Sciences

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1 and the Law, we noted all of the things that people have
2 called the PPG before in the courts.

3 Q Now, PPG testing has a legitimate place in
4 treatment; is that right? A lot of places have found that
5 it has a legitimate place in treatment.

6 A I mean, I would argue that it has a legitimate
7 place in lots of things, but it is frequently used in
8 treatment. I would agree with that.

9 Q Okay. And the purpose of that is, once you've
10 got somebody in treatment, you do a PPG test to establish
11 a baseline, and then down the road you do a PPG test again
12 to see if the treatment is still working or if they need
13 to change it to something else; is that correct?

14 A Theoretically you don't need it to establish a
15 baseline. So you would use a PPG in treatment, for
16 example, if somebody had sexual arousal to children and
17 you were giving them sexual arousal therapy. So you were
18 trying to change what they were sexually aroused by. You
19 would want to then give them a PPG to see if they were
20 able to not be aroused during the child scenarios.

21 So, sure, a baseline could be helpful, to
22 make sure that they really do have that condition, that they
23 really are aroused by children. But you're looking to see
24 if they are able to implement the treatment in the scenarios
25 that they reported they would have previously found to be

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1 sexually arousing.

2 MR. THOMPSON: If you will bear with me just a
3 moment, Your Honor. I think I'm getting towards the
4 end.

5 (Pause.)

6 BY MR. THOMPSON:

7 Q I believe I asked this question, but I want to
8 make sure. The PPG is just one tool that you use, right?

9 A It is one data point that I use over the course
10 of my whole evaluation.

11 Q And there is no specific one tool that you can
12 use to determine whether somebody is a sexually violent
13 predator and likely to reoffend; is that correct?

14 A Oh, that is correct, yes.

15 Q It cannot be used as the sole data point?

16 A It isn't, and it shouldn't be.

17 MR. THOMPSON: I don't believe I have anything
18 further.

19 THE COURT: Any redirect?

20 MR. RUNYAN: Just briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. RUNYAN:

23 Q Dr. Gottfried, there was some question about
24 whether or not you give the PPG multiple times.

25 A Yes.

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1 Q When you are dealing with these stimuluses (SIC)
2 aren't there multiple sets? Like, I mean, isn't there an
3 arousal scenario to a coercive rape, and then later on
4 there's another arousal scenario to -- or children or vice
5 -- you know what I'm saying, there's multiple?

6 A Correct. There's multiple trials that feature
7 the same stimuli.

8 Q So do you see consistency between arousal -- if
9 they're aroused by one, they are aroused by another?

10 A Typically we do, yes.

11 Q Okay. Now, are you -- you testified, I think,
12 that you are more concerned about false positives than
13 false negatives; is that correct?

14 A Correct.

15 Q There was some testimony about, you know, coming
16 up with a margin of error for false negatives, but what is
17 more important?

18 A The false -- in this kind of a case, or this
19 kind of a test, like in contrast to a COVID test, you
20 would want a higher level of false negatives than false
21 positives. You would rather miss somebody than say
22 someone has arousal that they don't actually have because
23 we're doing a multimethod assessment, it is not until data
24 points.

25 Q And with your quality control measures, you were

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1 asked about calibration.

2 A Yes.

3 Q Tell me about the calibration process. Can the
4 test, PPG test, be given if it is not calibrated?

5 A No. So I've actually tried to override it in
6 preparation for something, I was trying to look up
7 something in the system. There's absolutely no way to
8 override it.

9 So you have to actually have a gauge inserted
10 into the PPG machine, you have to -- you have an arousal
11 calibration cone. So, for example, if the gauge was 90
12 millimeters, you would put it on at 60 millimeters, and then
13 use this little tool, and you would put it on 70
14 millimeters, 80 millimeters, 90 millimeters to make sure
15 it's perfectly calibrated.

16 And so if it bounced the calibration, then
17 you can't do the test, you have to get a new gauge. And you
18 do the five-step process when it is calibrated. I mean,
19 typically you calibrate them, but every once in a while
20 there might be one that is bad or doesn't calibrate and then
21 that tells you you need a new one. So you cannot start a
22 test unless you have a perfectly calibrated gauge.

23 Q Now, the PPG is recognized as an objective
24 measure of male sexual arousal?

25 A Correct.

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1 Q So this idea of it being used in treatment
2 versus assessment, I guess hypothetically, I mean, you
3 were asked, they enter treatment and they are given a
4 baseline, and that baseline is used to assess them later
5 on to see if treatment is working.

6 Well, imagine there's a door between
7 treatment and non-treatment, is giving PPG here to
8 establish arousal any different than the baseline arousal
9 here? So how is it allowed here, but not here? You know
10 what I'm saying by this?

11 A I understand. I would think that if it's
12 reliable to establish a baseline for treatment, then it's
13 reliable here, because we are simply looking at what the
14 person is showing arousal to in comparison to their
15 arousal to consenting adult scenarios or trials. And so
16 we are establishing preferences or sexual arousal and
17 looking at current arousal. But I don't -- I don't know
18 how it's different between those two. It would be the
19 same PPG.

20 Q Right. Now -- and one of the measures you use
21 to ensure things are done correctly, is that you use that
22 conservative cut score, which is higher than other places,
23 correct?

24 A Correct.

25 Q As far as pictures of 15-year-old girls arousing

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1 adult males and adult females arousing adult males, I
2 think you testified, I just want to clarify, and the
3 literature suggests this, you know, an adult male being
4 aroused by a 15-year-old girl is not something that is
5 deviant?

6 A Correct. That is not a mental illness typically
7 that would be recognized in the DSM.

8 MR. RUNYAN: Nothing further, Your Honor.

9 THE COURT: Anything further of this witness?

10 MR. THOMPSON: No, Your Honor.

11 THE COURT: Thank you, Doctor. You can step down.

12 THE WITNESS: Thank you.

13 MR. THOMPSON: Your Honor, may I have just a
14 couple minutes to talk to my doctor to see if we need
15 to put up something in reply?

16 THE COURT: Okay.

17 (Brief recess.)

18 THE COURT: Mr. Thompson.

19 MR. THOMPSON: Your Honor, I wanted to make sure
20 that there was nothing that I just totally missed in
21 cross-examination. And I don't see a need to put my
22 doctor on the stand for this. She has stepped to the
23 ladies room and will be back in a minute. But I don't
24 think we're going to call anybody.

25 THE COURT: All right. Gentlemen, this is what i

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1 want to do, I want to read these cases over again and
2 look at my notes. So, we're going to take a break
3 right now. And we will reconvene at 2 o'clock, and
4 I'll announce my decision on the motion.

5 MR. RUNYAN: Thank you, Your Honor.

6 MR. THOMPSON: Your Honor, may I'm -- it's just a
7 housekeeping. Maybe I'm just getting old, I'm having
8 trouble hearing. Is there some way we could amplify
9 things?

10 THE COURT: That's my fault. I didn't talk into
11 the microphone.

12 MR. THOMPSON: Well, that's fine, I was having
13 trouble hearing from the witness stand too.

14 THE COURT: They have to remind me constantly with
15 this plexiglass covering to talk into the microphone,
16 and I'm used to not doing that, so whenever you can't
17 hear just let me know. Either side. But I'll try to
18 make an effort to talk into the microphone.

19 And the witnesses need to make sure they talk into
20 the microphone as well, because they have a COVID
21 protection plexiglass covering in front of them as
22 well.

23 And I think that we -- and our court reporter, you
24 just let them know as well if you are having any
25 trouble hearing.

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1 MR. RUNYAN: And, Your Honor, just a question.
2 You didn't have any trouble hearing?

3 THE COURT: I didn't, but she was sitting right
4 next to me.

5 MR. RUNYAN: I didn't know. There was a question,
6 let's put it that way. I can't tell.

7 THE COURT: Right. Okay. We'll break for lunch
8 and start back at 2 o'clock.

9 MR. THOMPSON: All right, sir. Thank you.
10 (Lunch recess.)

11 THE COURT: All right. Let's go on the record.

12 Over the break I considered the Respondent's
13 Motion to Suppress the PPG testimony. The Court heard
14 the proffered testimony from Dr. Emily Gottfried in the
15 Medical University of South Carolina, who was
16 stipulated to be an expert for purposes of the hearing.
17 Each term is correct when they tell me in their
18 arguments that Rule 702 governs the admissibility of
19 this testimony.

20 Can you not hear me? I'm trying to speak into the
21 microphone -- is that better?

22 Okay. All right. Rule 702 governs the
23 admissibility of this testimony. Several -- I made
24 several findings for the record. I find that the
25 proffered expert testimony will assist the Court as the

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1 trier of fact in understanding the evidence in the
2 case, which involves technical and/or scientific issues
3 outside the realm of the ordinary knowledge of a lay
4 person.

5 Respondent cites two older cases, but they are
6 still good law, State versus Council and State versus
7 Jones in outlining the factors to be considered by the
8 Court in deciding whether to admit scientific evidence.
9 And I'll just, for the purposes of the record, go down
10 each one.

11 The first consideration is peer review in
12 publications. The testimony of Dr. Gottfried
13 indicates that the PPG test is subject to peer review.
14 She had some testimony in which she related that she
15 participates on occasion in peer review.

16 And also, the test has been subject to numerous
17 publications. There also were direct quotes from
18 DSM-5, which is the most recent edition of that book,
19 that recognizes these sorts of tests.

20 The second factor is the prior application of the
21 methods of this type of evidence. Dr. Gottfried
22 further testified that this method is in use in over 50
23 labs in various parts of the country. There is
24 international cooperation, although it was indicated by
25 the testimony that there are different standards for

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1 some countries and the United States. But for purposes
2 of our review here today, I find there is standard
3 application in the United States, based on her
4 testimony.

5 Third factor is quality control procedures. This
6 standard is met according to the testimony with several
7 things. First, the conservative threshold, according
8 to Dr. Gottfried's testimony, that would err on the
9 side of a false negative rather than a false positive.
10 There's also use of a baseline by the technicians,
11 which would satisfy the quality control requirement.
12 And then there was a detailed explanation of how that
13 baseline is arrived at.

14 The final leg of the -- the standard would be the
15 consistency and method with recognized scientific laws
16 and procedures.

17 I would note that Dr. Gottfried's testimony
18 indicates that the RCV images and audio are standard,
19 provided by the manufacturer, Limestone Tech. She
20 indicated that she and other technicians operated the
21 tests, used the standard instructions provided by the
22 manufacturer. Also that there are methods put into
23 place to ensure or to prevent a manipulation of the
24 test, and she gave several examples of how an
25 individual may attempt to manipulate the test.

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1 The Court would also note for the record that it
2 was testified that the PPG test is just one data point,
3 and that it does not preclude other considerations.

4 So, therefore, I find the testimony admissible.
5 And many of the Respondent's arguments go to the weight
6 of the testimony and not the admissibility. So
7 certainly this is without prejudice to the Respondent's
8 ability to challenge the weight and sufficiency of the
9 evidence. That would be the ruling on that issue.

10 Is there anything further before we proceed?

11 MR. THOMPSON: I would just ask that our objection
12 be noted, Your Honor.

13 THE COURT: Yes, sir. Your objection is noted for
14 the record.

15 MR. RUNYAN: Nothing further from the State, Your
16 Honor.

17 THE COURT: Okay. All right. Let's go forward.
18 Call your first witness.

19 MR. RUNYAN: Thank you, Your Honor. The State
20 would call Dr. Emily Gottfried.

21 THE COURT: Go ahead and swear her again.

22 **Thereupon,**

23 DR. EMILY GOTTFRIED
24 was called as a witness, having been first duly sworn,
25 was examined and testified as follows:

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1 MR. RUNYAN: Your Honor, to do this in an interest
2 of time, I would like to just make a motion that Dr.
3 Gottfried's testimony about the PPG and how it works be
4 incorporated into this by reference so we don't have to
5 go through those items again.

6 THE COURT: Mr. Thompson, what are your thoughts?

7 MR. THOMPSON: I have no objection to that,
8 subject to our objection to it being entered and
9 offered.

10 MR. RUNYAN: Yes, sir. Yes, sir. I mean, the
11 Court has heard all of the testimony and it was under
12 oath.

13 THE COURT: The Court will note that for the
14 record.

15 DIRECT EXAMINATION

16 BY MR. RUNYAN:

17 Q Please state your name, and spell it for the
18 record please.

19 A Yes, sir. Doctor Emily Gottfried,
20 G-O-T-T-F-R-I-E-D.

21 Q By whom are you employed and in what capacity?

22 A I work at the Medical University of South
23 Carolina. I'm an assistant professor of psychiatry and
24 behavioral sciences, and I am the director of our sexual
25 behaviors clinic and lab.

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1 Q In order to be employed in this capacity, are
2 you required to have a certain education, background, and
3 experience?

4 A Yes.

5 Q And do you have that?

6 A Yes.

7 Q Could you tell us where you went to undergrad?

8 A I completed a bachelor's degree in psychology
9 from San Diego State University.

10 Q Do you have any higher degrees?

11 A Yes.

12 Q What are they?

13 A I have a master's degree in psychology from
14 Teachers College of Columbia University. I have a
15 master's degree in clinical psychology from Florida State
16 University. And then I have a Ph.D in clinical psychology
17 from Florida State University.

18 MR. THOMPSON: Your Honor, we will stipulate that
19 she is an expert in forensic psychology, if that is
20 what the State is asking.

21 MR. RUNYAN: Yes. We would like to ask for her to
22 be recognized as a forensic psychologist, an expert.

23 THE COURT: She is admitted as an expert in
24 forensic psychology without objection.

25 BY MR. RUNYAN:

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1 Q Dr. Gottfried, what type of evaluation did you
2 conduct in the case?

3 A It was a pre-commitment evaluation pursuant to
4 the Sexual Violent Predator Act.

5 Q And can you describe for the Court what the
6 steps are you take in conducting these types of
7 evaluations?

8 A Yes. So we receive a request from your office,
9 the Attorney General's Office, to conduct an independent
10 evaluation, or a second opinion. Your office provides a
11 lot of collateral information to include police reports,
12 indictments, warrants, sentencing sheets from general
13 sessions court, Department of Corrections' records, prior
14 evaluations.

15 And then we schedule the examinee to come in
16 for three appointments at the Medical University of South
17 Carolina, where we conduct a battery of psychological and
18 physiological tests. And then also conduct a comprehensive
19 clinical interview. And then I write my findings into a
20 report, and then send in the report.

21 Q And how many times have you conducted SVP
22 pre-commitment evaluations for the Attorney General's
23 Office?

24 A I have been referred 22 pre-commitment
25 evaluations from your office.

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1 Q And when you get those, it is typically -- it is
2 in response to getting a second opinion based on our
3 disagreement with DMH's evaluation, correct?

4 A Correct. Every evaluation I do pursuant to the
5 act is requested as a second opinion.

6 Q Do you always disagree with the DMH evaluated
7 opinion?

8 A No.

9 Q Can you give me a breakdown of how many times?

10 A Let's see. So just for pre-commitment, our
11 office was referred 22 cases. In ten of those cases I
12 said that the person met criteria for being a sexual
13 violent predator. And in seven of those cases I said, No,
14 that they did not. And then five are still pending
15 without an opinion.

16 Q Okay. At the beginning of the evaluation, was
17 Mr. Williford informed of what you were doing?

18 A Yes.

19 Q Did he sign consent forms?

20 A Yes.

21 Q How many times did he sign the consent forms?

22 A He signed our consent form on one occasion, and
23 he reviewed it and signed a re-reading of it on an
24 additional two occasions.

25 Q As a part of his evaluation, did you meet with

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1 and interview Mr. Williford?

2 A Yes.

3 Q And is the man you met with here today in the
4 courtroom?

5 A Yes.

6 Q And could you point him out to us.

7 A Yes. He's sitting at the Respondent's table.

8 MR. RUNYAN: Your Honor, I'd ask that the record
9 reflect that Dr. Gottfried has identified Mr.
10 Williford.

11 THE COURT: So noted.

12 BY MR. RUNYAN:

13 Q Doctor, how many times, how many occasions did
14 you meet with Mr. Williford?

15 A He was at our clinic and lab on three occasions.
16 The first occasion, I went over the consent form with him.
17 Then he completed the PPG testing that was administered by
18 our lab technician.

19 The following day, I re-reviewed the consent
20 form with him. I administered a battery of psychological
21 testing. And then I started the clinical interview on that
22 day. And then he returned in April and I completed the
23 clinical interview.

24 Q So could you tell me on the day that you met
25 with him to interview him, how did he interact with you?

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1 What was his attitude?

2 A He was alert. He seemed to be a little bit
3 superficially cooperative, in that he provided responses
4 to most of the questions I asked of him. But the answers
5 were really wordy. They didn't always address the
6 question at hand.

7 There was kind of a sense that he was
8 searching for what the, quote, unquote, correct or right
9 answer was. Some questions he never fully provided a
10 response to.

11 Between my two interview dates, he provided
12 some inconsistent information. And then based on my reading
13 of Dr. Tross' DMH report, he reported some inconsistent
14 information on those evaluations as well.

15 Q So in addition to meeting with him and
16 interviewing him, did you -- what information did you
17 receive to aide you in conducting the evaluation?

18 A Generally from your office I receive the list of
19 his juvenile offenses, documents from the Anderson County
20 Sheriff's Office, to include incident reports, and I
21 think, some witness statements. Documents from the
22 Anderson County Court of General Sessions, including
23 indictments, warrants, summary sheets. I got his records
24 from the Department of Corrections, his criminal history
25 report. And then the Department of Mental Health

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1 evaluation.

2 Q How did you obtain that information?

3 A All from your office.

4 Q Did you consider and rely on the records you
5 just listed and your interview and the assessments you
6 performed in rendering an opinion in this matter?

7 A Yes.

8 Q Is the type of information that you listed
9 typically and reasonably relied upon by experts in your
10 field?

11 A Yes.

12 Q Doctor, can you explain to the Court how an
13 individual's past sexual offenses and their behaviors
14 relate to their future sexual offenses and behaviors?

15 A Well, I think the easiest way to state it is
16 someone's past behavior is the best predictor of future
17 behavior. So you also want to look at past sexual
18 behaviors because they can help you kind of get insight
19 into if a new crime or a new offense would occur, what --
20 what victim might be targeted, like an adult versus child,
21 how violent that might be, some of the characteristics.

22 Q And is it important to look at prior criminal
23 history?

24 A Yes.

25 Q It is important to look at that history even if

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1 it's not sexual?

2 A Yes.

3 Q Why is that?

4 A Well, so we are looking, first of all, if it's
5 violent, that is going to give us some insight into the
6 risk of future sexual violence. We want to look at their
7 ability to kind of follow the rules and laws of society.
8 So it might give you information about the personality
9 functioning, how he's following the rules and things like
10 that.

11 Q And it's important to look at past behavior,
12 even if they are not convicted or charged?

13 A Yes.

14 Q Why is that?

15 A So for a sexually violent predator evaluation,
16 the ultimate consult question is, does this person have a
17 mental abnormality or personality disorder that makes them
18 more likely to sexually reoffend?

19 So we are looking at -- we're looking for
20 patterns of behaviors. So things are weighted differently
21 if someone wasn't charged or wasn't convicted. We are
22 looking for patterns and behaviors to see if there is a
23 pattern, kind of looking to see what this person has been
24 accused of before, what they have been convicted of.

25 So just essentially looking for patterns of

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1 behavior.

2 Q And in your review of Mr. Williford's criminal
3 history, what did you find significant in your opinion --
4 or to your opinion?

5 A Well, I noted that his criminal history started
6 at the age of 13, when he was charged with criminal sexual
7 conduct in the first degree. He was adjudicated
8 delinquent for that. It was difficult to tell from the
9 records whether he had one charge of that at the age of 13
10 or two, because there were papers from his juvenile
11 records that had different dates. So he was adjudicated
12 delinquent on one to two counts of criminal sexual conduct
13 in the first degree.

14 And then he had been adjudicated delinquent
15 on several other charges as a juvenile -- trespassing,
16 public disorderly conduct, disturbing schools. He was
17 adjudicated delinquent on assault of a high and aggravated
18 nature, trespassing on school property. And then charged
19 with assault and battery as well as a juvenile.

20 And then looking at his adult criminal
21 history, he had in excess of around 20 adult charges --
22 taking a vehicle without an owner's consent in 1989. That
23 was dismissed, but that was the first adult charge. He was
24 convicted of violation of South Carolina gun law. He was
25 sentenced to probation for that. Charged and convicted of

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1 disorderly conduct, failure to accompany officers. Some
2 other violent charges, battery of a high and aggravated
3 nature that had been dismissed.

4 In 1990, he was arrested and charged with
5 murder. That charge was dismissed during the preliminary
6 hearing, but he was ultimately convicted of involuntary
7 manslaughter.

8 He had been serving a probation sentence, and
9 his probation was revoked as an adult when he was charged
10 with and convicted of carrying a pistol. He was charged
11 with three counts of assault and battery in 1993. Those
12 charges have been dismissed. He had a number of charges and
13 convictions for driving with suspended license.

14 Let's see. He had another probation
15 violation. He was convicted of assault and battery.
16 Provided false information to a police officer. Malicious
17 injury to personal property. And then charges and
18 convictions for numerous sexual offenses.

19 In 2001, he was charged with criminal sexual
20 conduct in the first degree, simple assault and kidnapping.
21 And he was convicted of criminal sexual conduct in the first
22 degree and kidnapping on those charges.

23 He was subsequently arrested and charged with
24 two counts of kidnapping, but ultimately found not guilty of
25 those. And then in 2002, he was charged with two counts of

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1 criminal sexual conduct in the first degree, kidnapping, and
2 assault and battery with intent to kill. And he was
3 convicted of all four of those charges.

4 Q And you considered all of those in your opinion?

5 A Yes.

6 Q Based on your interview with Mr. Williford and
7 your review of his file, at the time you interviewed with
8 him, had he been convicted of any sexually violent
9 offenses?

10 A Yes.

11 Q What were they?

12 A The two counts of criminal sexual conduct in the
13 first degree from the 2002 charge. And one count of
14 criminal sexual conduct from the 2000 charge. And then he
15 was also adjudicated delinquent as a juvenile on the
16 criminal sexual conduct first degree, either one or two
17 counts of that.

18 Q And did you review the law enforcement and DJJ
19 records concerning these offenses?

20 A Yes. There were limited law enforcement records
21 from DJJ, but all the records that were provided, I
22 reviewed them.

23 Q Are these records part of the information that
24 you listed originally for the Court?

25 A Yes.

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1 Q And are these the types of records other experts
2 in your field reasonably look -- sorry, rely on in
3 rendering their opinions in these matters?

4 A Yes.

5 Q And why is it necessary to examine the
6 underlying details of these crimes?

7 A So as I mentioned, we're looking for patterns of
8 behavior. So we're looking to try to identify if a person
9 has a deviant arousal pattern, offense indicators can help
10 you when you're formulating whether or not a person has a
11 diagnosis. And also, we are looking at them because they
12 help you predict risk for future offenses, and if those
13 events were to occur, kind of the characteristics that you
14 might expect to see.

15 MR. RUNYAN: I have two documents here. May I
16 approach Your Honor?

17 THE COURT: Yes, sir.

18 MR. RUNYAN: Thank you.

19 BY MR. RUNYAN:

20 Q These have been marked State's 1 and State's
21 2 -- or, I'm sorry -- Plaintiff's 1 and Plaintiff's 2 is
22 how they're marked.

23 BY MR. RUNYAN:

24 Q Do you recognize these documents?

25 A Yes.

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1 Q And are these something that you reviewed for
2 this case?

3 A Yes.

4 Q And what are they?

5 A They are sentencing sheets from February 6th of
6 2003. The first is a sentence for criminal sexual conduct
7 in the first degree. And the second is criminal sexual
8 conduct in the first degree.

9 Q And are those certified copies from the clerk of
10 court?

11 A Yes.

12 MR. RUNYAN: Your Honor, I would request at this
13 time, the pre-marked Exhibits 1 and 2, be entered into
14 evidence.

15 THE COURT: Any objection?

16 MR. THOMPSON: No objection.

17 THE COURT: So the Petitioner's Exhibits 1 and 2
18 would be admitted without objection.

19 *(Whereupon, Petitioner's Exhibit No(s). 1-2 marked*
20 *for identification and received in evidence.)*

21 MR. RUNYAN: Thank you, Your Honor.

22 BY MR. RUNYAN:

23 Q On the first one, Dr. Gottfried, the indictment
24 ending in 418 and 41 -- 420, the ones that I gave you,
25 could you tell me about the underlying details of those

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1 crimes?

2 A Yes. So those are stemming from the victim with
3 the initials HM. She's a 35-year-old woman. And on New
4 Year's Eve of 2002 she was walking and was picked up by a
5 man between 6:30 a.m. and 7 a.m. He asked if she would
6 like to have a beer with him, she said yes, and he drove
7 her to an abandoned house. He told her that he wanted to
8 engage in sexual intercourse with him -- or with her. And
9 she told police that she repeatedly told him no.

10 She told police that he hit her on the side
11 of her face with his fist. He told her to take her clothing
12 off before he killed her. He hit her again, kicked her in
13 the stomach, and grabbed her around the neck. He hit her in
14 the head with a pipe. She reported that she had no clothing
15 on, and he dragged her around the abandoned house. He
16 reportedly kept telling her to, quote, open her damn legs.
17 He vaginally raped her. But he didn't ejaculate at that
18 time.

19 She said potentially that was attributable to
20 substance abuse. He then told her to put her clothes back
21 on and get back in the van. When he started driving she
22 asked to be let out. He said no.

23 He drove the van to an abandoned road in a
24 wooded area. In the van he made her remove her clothing
25 again and spread her legs. She said that she wasn't going

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1 to, and he reportedly pulled out a knife from his jacket
2 pocket, he opened it, and she said that he acted like he was
3 going to stab her.

4 She said that she put her hands up and
5 subsequently was stabbed in the hand, causing her hand to
6 bleed. He told her to spread her legs, and that he would
7 kill her if she didn't. She reported that he ejaculated on
8 her pubic hair. She then -- he then instructed her to put
9 her clothing back on and told her to get out of the van.

10 She attempted to flag down a car for help,
11 and reportedly no one stopped, so she laid on the side of
12 the road and somebody called an ambulance for her.

13 She picked Mr. Williford out of a photo array
14 conducted by the police. And so he was ultimately charged
15 with two counts of criminal sexual conduct in the first
16 degree, kidnapping, and assault and battery, attempt to
17 kill, which he was convicted of. He was sentenced to 20
18 years in prison on each of those.

19 And then during my evaluation, I talked to
20 the examinee about the allegations or the details of the
21 offenses that they have been convicted of. He said that he
22 had been released from the detention center in October of
23 that year, and that he had been exchanging drugs for sex,
24 that this victim, he gave her drugs and he said to me that
25 one thing led to another.

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1 He told me that he had been vindicated in a
2 jury trial, but when I asked him if he could provide that
3 paperwork, or have his lawyer provide it to me, he said that
4 he wouldn't provide that information.

5 Q You said -- you just said he was released from
6 the detention center?

7 A Yes.

8 Q What do you mean by that?

9 A So he had been arrested previously for a sexual
10 offense, and he had posted bond and was released before
11 those charges had been resolved.

12 Q So he was on bond for a criminal sexual conduct
13 charge, and while he was on a bond he did this crime; is
14 that correct?

15 A Correct.

16 Q What do you find significant with regard to your
17 opinion about the criminal offense behavior for this
18 conviction?

19 A It was pretty violent, so -- he threatened to
20 kill the victim. He reportedly hit her with a pipe,
21 threatened her with a knife, that she reported to police
22 that she clearly said no. He had been socializing with
23 her before, they drank a beer together. Those are some of
24 the things that I found significant.

25 MR. RUNYAN: I have another document here, if I

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1 may approach, Your Honor?

2 THE COURT: Yes, sir.

3 MR. RUNYAN: Thank you.

4 BY MR. RUNYAN:

5 Q This document is marked Plaintiff's 3.

6 Dr. Gottfried, do you recognize that document?

7 A Yes.

8 Q Is it something that you reviewed for this case?

9 A Yes.

10 Q And what is it?

11 A This is another sentencing sheet from County of
12 Anderson, also dated February 6th, 2003, for criminal
13 sexual conduct in the first degree.

14 Q Okay. Could you tell us what -- what were the
15 underlying details regarding this conviction?

16 A So this was from July 1st of 2000. A woman
17 reported that she was offered a ride by a man that she
18 knew. When she got into the car he purportedly told her
19 that he wanted her for a long time. He turned into a
20 driveway and she got ready to get out of the car and he
21 pulled her by the side of her shirt back into the car.

22 When she asked him what he was doing, he
23 said, quote, you have to give me some. He had a knife that
24 was 4 to 5 inches long. They purportedly wrestled with the
25 knife, and in the process Mr. Williford's finger was cut.

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1 He told her to get out of the car. He picked up a brick and
2 told her that if she wanted to live tonight to see tomorrow,
3 she would get back into the car.

4 He then opened the door to the back seat,
5 pulled her pants down with the brick still in his hand.
6 Then he pulled his own pants down, and started having sex
7 with her. He said something about her having a frown on her
8 face and so that she should wipe the frown off, that she
9 might as well enjoy it as he wasn't going to stop until he,
10 quote, came.

11 She told police that she believed he
12 ejaculated inside of her. He left and took her underwear
13 with him. And she ultimately picked Mr. Williford out of
14 the photo line-up conducted by police. So he was arrested
15 for that on February 25th of 2001. He was released from the
16 detention center after posting bond on February 28th of
17 2001.

18 So during my evaluation -- or so he was
19 charged in February of 2001 with criminal sexual conduct in
20 the first degree, simple assault, and kidnapping. And he
21 was ultimately convicted of criminal sexual conduct in the
22 first degree and kidnapping, and sentenced to 20 years, to
23 be served concurrently with the other charges from the first
24 event that I talked about.

25 So during my evaluation, Mr. Williford

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1 generally denies the allegations, or these charges against
2 him, the convictions. When I kind of went through the
3 details from the police reports with him, he said that the
4 details were totally impossible, that he said, I had a
5 knife, and then I had a brick. He said that he had
6 paperwork that said he had a knife, a brick, wood. He said
7 he would have needed multiple hands. And then kind of
8 talked about how men are always wrong in women's eyes.

9 I also reviewed Dr. Tross' DMH evaluation.
10 And to her he is describing engaging in consensual natural
11 sex with her in exchange for crack cocaine. He said that
12 she had reported the sexual activity to police because Mr.
13 Williford refused to give her additional drugs and to give
14 her extra money for her to drop the charges.

15 Q What about Mr. Williford's behavior in this
16 criminal offense, in this conviction, that is significant
17 to you in regards to your opinion?

18 A A lot of offensive characteristics were really
19 strikingly similar to the one I just previously talked
20 about. He had a knife, threatened her with a brick,
21 threatened to kill her. Kind of drove her somewhere out
22 of the way, abandoned. The offense characteristics of all
23 his behaviors were really similar.

24 Q Now, as a part of your evaluation, you testified
25 that you looked at other sexual conduct that is criminal

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1 in nature?

2 A Yes.

3 Q And that is even if no charges or arrests ever
4 happened?

5 A Yes.

6 Q And, again, why do you do that?

7 A So again, I'm looking to see if there are
8 patterns of behavior that might suggest arousal patterns.
9 Again, because the ultimate opinion is whether or not they
10 have a mental abnormality, a personality disorder that
11 makes them likely to reoffend. It's important to look at
12 all of the information available to kind of establish that
13 and look for patterns of behavior.

14 Q So did Mr. Williford have any other sexual
15 conduct that was criminal in nature?

16 A Yes.

17 Q Could you tell us what that is?

18 A So when he was 13, he was charged with criminal
19 sexual conduct in the first degree. He didn't have any
20 officially reported information from that, only that he
21 went to Department of Juvenile Justice after being found
22 delinquent.

23 He told me during my evaluation that this was
24 stemming from his second daughter's mother's nephew, before
25 he met her. So I guess an acquaintance. That this boy had

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1 made allegations against him and several of his friends in
2 the neighborhood, that they had forced this child to perform
3 oral sex on them.

4 He said that that didn't happen, that he and
5 his friends were kind of bullies in the neighborhood, maybe
6 that was why he had been accused, or that maybe one of the
7 guys were accused did it and then he blamed it on all of
8 them.

9 From Dr. Tross' report, I noted that he told
10 her that two men who he knew from his neighborhood accused
11 -- or two males that he knew from the neighborhood accused
12 him and three of his friends of forcing them, those two
13 boys, to perform oral sex. And he denied to her that that
14 had occurred as well.

15 Q Are there unconvicted but charged sexual
16 behaviors that he has?

17 A Yes.

18 Q Could you tell us what those are?

19 A On Christmas Eve of 2002, a woman reported to
20 police that at 4:00 in the morning she was picked up by
21 two men that she knew. They drove her to an abandoned
22 house. One of the men produced a knife, ordered her into
23 the residence, and told her to take off her clothes, and
24 then began engaging in nonconsensual sexual intercourse
25 with her.

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1 They dropped her back off. She called 911.
2 And when the police were there, she refused to respond to
3 Anderson Area Medical Center in order to have a rape kit
4 collected. And then she said that she didn't want to press
5 charges, that she just kind of wanted it known so that they
6 wouldn't do this to somebody else.

7 She provided the license plate number of the
8 car that picked her up, and it was noted in the police
9 report that it was registered to someone with the last name
10 Williford.

11 So he -- from those police reports, they were
12 investigating criminal sexual conduct in the first degree
13 and kidnapping, but because the victim said she didn't want
14 to press charges, didn't allow evidence to be collected
15 through the rape kit, he was not charged for that.

16 During my evaluation, Mr. Williford said that
17 this was with somebody who he had paid for sex, denied the
18 allegations. And from Dr. Tross' report, I noted that they
19 -- that she said that during the interview he denied knowing
20 the complainant or that he had that allegation against him.

21 Q So is there anything significant about the day,
22 the date of the two offenses, the one he was actually
23 convicted of, and this one that he was charged of?

24 A So the first one happened in July of 2000, and
25 he got out of the detention center in February. And then,

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1 let's see -- and then there was one in October.

2 So they all kind of happened subsequently.

3 So this happened on Christmas Eve, and then the one that he
4 was ultimately convicted of happened on New Year's Eve.

5 Q Okay. You said on Christmas Eve, and then the
6 next one he was convicted of happened on New Year's Eve;
7 is that what I heard?

8 A New Year's Eve, yes.

9 Q Okay. So they were about a week apart?

10 A Yes.

11 Q Now, is there any other charges that you
12 considered? Criminal behavior you considered?

13 A Yes. So he also was charged with kidnapping,
14 two counts of kidnapping. And the information that I
15 received, like I didn't receive very many. I saw that he
16 had been charged with the kidnapping, that he was -- those
17 charges were dismissed or adjudicated not guilty. From
18 Dr. Tross' report, I noticed that he had also been charged
19 with criminal sexual conduct.

20 So I asked him about that during my
21 evaluation. He said that this was an ex, or his girlfriend
22 at the time, that he felt like he was going to marry her,
23 and he ended up not proposing to her, that she alleged that
24 he had kidnapped her, taken her somewhere else, forced her
25 to have sex with him, and that none of this happened.

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1 Because, you know, she picked me up, we were at a gas
2 station. If I had kidnapped her, she could have run away
3 while I was pumping gas.

4 And he said something pretty similar to Dr.
5 Tross, that this was a mutually agreed upon weekend getaway,
6 that they had consensual sex, and that he believed that she
7 accused him of these crimes because he did not ask her to
8 marry him.

9 Q And he was charged with criminal sexual conduct,
10 but that was dismissed?

11 A Yes.

12 Q Okay. As a part of your evaluation, do you look
13 at institutional misconduct?

14 A Yes.

15 Q Did Mister -- does Mr. Williford have any
16 institutional misconduct?

17 A Yes. He was convicted of one disciplinary
18 infraction in 2004 at SCDC.

19 Q So you reviewed SCDC records concerning these
20 offenses?

21 A Yes.

22 Q And those are part of the records that you have
23 listed for the Court originally?

24 A Yes.

25 Q And those are the types of records that other

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1 experts in your field rely on to make these opinions?

2 A Yes.

3 Q And as you mentioned, he had, you said one?

4 A Correct.

5 Q What was important, or what were the underlying
6 details and how does that figure into your conclusions?

7 A So for this month, it was -- he was convicted of
8 striking another inmate without a weapon. The SCDC record
9 indicated that he admitted to several officers that he
10 slapped another inmate twice. And other inmates had
11 written statements about this. So he was convicted of
12 that.

13 During my evaluation with him, he said that
14 this was over someone snitching on him, and that he received
15 13 months on lockdown as a result of this disciplinary
16 conviction.

17 Q Now, did you -- you have testified about Dr.
18 Tross' report, so you reviewed other evaluation reports as
19 a part of your evaluation?

20 A Yes.

21 Q What was Dr. Tross' diagnosis?

22 A Those were --

23 Q Give her diagnosis. Did she have a diagnosis
24 for him?

25 A She did not diagnose him with anything, no.

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1 Q Okay. Now, Doctor, were there any assessments
2 that you performed as a part of your evaluation?

3 A Yes.

4 Q What type of assessments are there that you do?

5 A So I do a couple different types of assessments.
6 As I testified previously, I want to use a multimethod
7 assessment way to measure something like similar conduct
8 in multiple different ways.

9 So I do it directly with a clinical interview
10 and then I give a battery of tests. So some of the battery
11 of tests are ones that Mr. Williford, or the examinee, takes
12 on the computer, so they're self-report. Some are
13 physiological, like the PPG that was administered to him.
14 And then some of the tests are what are called clinician
15 scored or clinician rated, based on my education and
16 training and expertise looking at risk factors from the
17 studies and the literature, looking at things like these
18 characteristics, and that being on my clinical interview
19 with the person, and a review of the records.

20 Q What is the purpose, why do you perform all of
21 these assessments and tests?

22 A Data points. So it's really important to look
23 at things in multiple different ways. We're looking for a
24 mental abnormality and personality disorders, if a person
25 meets criteria, and so it's happening in multiple

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1 different ways.

2 MR. RUNYAN: And I apologize, Your Honor. I don't
3 believe I asked to have Plaintiff's 3 admitted into
4 evidence.

5 MR. THOMPSON: No objection.

6 THE COURT: Any objection?

7 MR. THOMPSON: None.

8 MR. RUNYAN: Thank you.

9 THE COURT: So Petitioner's Exhibit Number 3 will
10 be admitted without objection.

11 *(Whereupon, Petitioner's Exhibit No(s). 3 marked*
12 *for identification and received in evidence.)*

13 BY MR. RUNYAN:

14 Q I apologize, Doctor. You were telling us about
15 data points.

16 Was the information you learned from these
17 assessments part of the basis of your opinion?

18 A Yes.

19 Q And are these the type of assessments that other
20 experts in your field reasonably rely on in making
21 decisions in cases like these?

22 A Yes.

23 Q So tell me about what you learned from, you
24 would say computer-based test, ones that Mr. Williford
25 performed on a computer. Tell me what you learned about

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1 those that you used in forming your opinion.

2 A So many of those tests have what are called
3 validity scales or validity indicators, kind of looking at
4 the person's approach to testing. So are they seeming
5 like they're being cooperative and forthcoming, are they
6 over reporting information, does it seem like they're
7 being defensive or under reporting information?

8 So I noted that on all of the ones where he
9 was filling out questionnaires or doing a self-report, all
10 of them have indications that he was maybe reluctant to
11 report minor faults that he had, that he was defensive, that
12 he reported to being relatively free of common shortcomings
13 that most people will admit to.

14 Even though he responded to some of the
15 measures defensively, he -- his results suggested that he
16 may have had problems with substances in the past. And then
17 otherwise he just wasn't reporting any psychological
18 symptoms. So, again, all of his tests really had to be
19 interpreted with caution, because they didn't seem like
20 valid indicators of his current level of functioning.

21 Q Would you please tell the Court why it is
22 important in these types of cases to assess a person's
23 sexual arousal?

24 A So there is a class of diagnoses called
25 paraphilic disorders, which is sexual arousal to something

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1 other than a consenting human adult.

2 So we want to look at sexual arousal in that
3 way, because that will help us in assessing if there is a
4 diagnosis present.

5 Q And how do you measure -- in your evaluation,
6 how do you measure sexual arousal?

7 A So I have them do a self-report questionnaire,
8 where I see if they're going to endorse being sexually
9 aroused by any of the stimuli that's on the self-report
10 questionnaire. And then I'm going to discuss it in detail
11 during my clinical interview. And I'm also going to look
12 at offensive behavior characteristics, and then
13 physiologically assess sexual arousal in the lab using
14 PPG.

15 MR. THOMPSON: I would object to the PPG, Your
16 Honor.

17 THE COURT: So noted.

18 BY MR. RUNYAN:

19 Q So you performed a PPG in this case?

20 A Yes.

21 Q Now we have, by reference, we have incorporated
22 your testimony from the prior hearing regarding what and
23 how the PPG is used.

24 So can you tell me, was the information you
25 learned from the PPG a part of the basis of your opinion?

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1 A Yes.

2 Q And what about Mr. Williford's performance on
3 the PPG was significant to you in rendering your opinion?

4 A Well, Mr. Williford showed clinically
5 significant sexual arousal to numerous or several of the
6 trials looking at coercion or sexual violence. When I
7 compared his arousal to the consenting -- the sexual
8 situations between consenting adults and the coercive or
9 rape scenarios, he showed about equal, equal levels of
10 arousal to both.

11 So I also noted that he perhaps was trying to
12 manipulate the test results in that there were some
13 countermeasure data that I talked about during the previous
14 hearing where he had movement and some breathing
15 abnormalities.

16 Q And you have said you performed both Marshall
17 sets, stimulus set, and the RCV set.

18 A Correct.

19 Q And did he show -- well, tell me, tell me what
20 he showed as far as arousals to the stimuli in each of
21 those.

22 A Sure. So on Marshall, he only had clinically
23 significant arousal to just one of the trials. That was
24 to coercion or rape of an adult woman.

25 For the RCV, he had clinically significant

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1 arousal to coercion of a female child, violence against a
2 female child, female infant, coercion or rape of an adult
3 woman. One trial that featured consensual sexual behavior
4 with an adult woman, and then persuasion of a male child.
5 And both of them show about equal arousal between the
6 consenting and the coercive scenarios.

7 Q And could you tell us how this data relates to
8 his offending pattern?

9 A So most of the scenarios that we attributed
10 clinically significant arousal to were to coercion or
11 sexual violence, which is consistent with the reported
12 offense behaviors.

13 Q Now, thank you. You were talking about, also
14 about some clinician score testing that you do, that you
15 do, first of all. Could you tell us about those?

16 A Yeah. So I scored him on the Harris Psychopathy
17 Checklist Revised, second edition, or the PCLR. And so
18 that is looking at characteristics associated with
19 psychopathy or someone being a psychopath. And so,
20 psychopathy isn't a diagnosis that's listed in the DSM or
21 the manual that we use to diagnose mental disorders, but
22 it's a personality -- it's similar to a personality
23 disorder. So it's kind of longstanding problems with
24 empathy, oddity, like lying a lot, things like that. So
25 all of those are kind of characteristics of psychopathy.

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1 And so Mr. Williford's score for the clinical
2 cut score on that was one score below the classification to
3 classify him as a psychopath.

4 So he wouldn't be classified as a psychopath,
5 but it's noted that he has a lot of characteristics
6 associated with psychopathy.

7 Q Okay. And what about that score is significant
8 to you, with regard to your opinion?

9 A Well, ultimately I diagnosed Mr. Williford with
10 some psychotic disorders that I also think were consistent
11 with the trace of psychopathy that he has. Although
12 psychopathy on its own is not uniquely related to risk for
13 sexual violence like reoffending, coupled with the
14 presence of a paraphilic sexual interest or being sexually
15 aroused to something other than consenting human adults,
16 that kind of centers (phonetic) the statement back, can
17 increase somebody's risk of sexual violence.

18 Q And you used actuarial assessment?

19 A Yes.

20 Q Can you explain to the Court briefly what
21 actuarial assessment is?

22 A Yes. So an actuarial assessments are looking at
23 the risk factors from the literature of studies of
24 thousands of people who have been convicted of a sexual
25 offense, and then kind of looking generally around five

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1 years after that, to look to see what made people who went
2 on to reoffend kind of similar.

3 So I like to compare this to like a life
4 insurance example. So when you apply for life insurance,
5 the company doesn't know exactly when you're going to die,
6 but they are going to look at how many risk factors you have
7 that's known with heart attack and early death. So if you
8 get a lot of speeding tickets, if you work as a race car
9 driver, if you smoke, if you have high blood pressure,
10 they're going to send you for a physical exam. And if you
11 have a lot of those characteristics that are associated with
12 heart disease, early death, then they're going to charge you
13 more for your life insurance premium. Not saying that you
14 individually are going to die early, but you have a lot of
15 these characteristics that are associated with it.

16 So these measures work in that way. So it's
17 not saying anything about an individual person's level of
18 risk, just comparing them to other people to look and see
19 how similar they are, people who go on to reoffend.

20 Q So you performed a Static 99R.

21 A Yes.

22 Q Could you tell the Court what a Static 99R is?

23 A Yes. So static risk factors are things that are
24 unchangeable. You cannot treat them. So your age. So
25 you always get older, but I cannot give you a treatment

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1 that makes you younger.

2 Having a male victim is a risk factor that's
3 unchangeable. So I can treat you to never again have a male
4 victim, but I can't go back and change that. So the Static
5 99 is looking at known static risk factors from the
6 literature. The scores range from negative 3 to 12, and
7 they are just scored on several factors that have been
8 coming up in the literature that have risk factors for
9 reoffending.

10 Q And the risk factors, they are comparing those
11 to people who have reoffended?

12 A Correct.

13 Q Sexually in the past have reoffended?

14 A Yes.

15 Q In your opinion, does the Static 99 under report
16 risk?

17 A Sorry, does it?

18 Q Does the Static 99 under report risk?

19 A Well, it's hard to know if it under reported,
20 because you have to like follow that person to see if that
21 was accurate for that person. So we don't really ever
22 know if the score that we gave someone is accurate for
23 that person, just the number of characteristics.

24 But we know that in the sample of looking at
25 people who reoffended, it only looks for detected offenses.

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1 So what that means is that a person hasn't been arrested.
2 We know that sexual offenses are the least likely to be
3 reported to authorities. Only about 30 percent of all
4 sexual instances are ever reported. So that might not
5 capture the full picture of people that are reoffending,
6 they are just people who got caught.

7 Q And the information you learned from the Static
8 99R, was that a part of the basis of your opinion?

9 A Yes.

10 Q And the Static 99R is usually relied upon by
11 experts in your field in forming their opinions?

12 A Yes, it's very widely used.

13 Q Very widely used?

14 A Yes.

15 Q I think you told us the scoring range for the
16 negative 3 to 12.

17 A Correct.

18 Q What was Mr. Williford's score?

19 A His score was seven, which is in the well above
20 average risk category.

21 Q And what did you find significant about his
22 reoffend risk score?

23 A So when you compare people in the norman sample,
24 or the studies that they looked at people who reoffended,
25 that gives them a five-year recidivism rate of about 27.2

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1 percent.

2 So that means out of 100 people with the same
3 risk score of 7, between 24 and 31 in those samples were
4 charged or convicted of a new sex offense within five years
5 in the community.

6 When you are kind of looking at percentiles
7 or comparing, a score of 7 is in the 97.2 percentile. So
8 that means if you scored 100 people who have been convicted
9 of sexual offenses, 96 would have a lower score than
10 Mr. Williford. Three would have the same score. And only
11 two would have a higher score than him.

12 Q What is the -- how many times more likely is Mr.
13 Williford than a person who scores the same score, would
14 likely to reoffend, how many times likely than the average
15 sex offender?

16 A No. So, if you look at their top relative risk
17 ratios, so someone who has a score of 7 on the Static 99
18 is 5.25 times the rate of an average sex offender on this
19 measure.

20 Q What is the average sex offender's reoffend
21 rate?

22 A Well, the score is 2. So his score was 7. From
23 the literature, the average reoffending rate for sex
24 offenses is between 12 and 15 percent generally.

25 Q So his would be averaged above, his would be

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1 5.25 times higher than --

2 A I don't think it's like that. Because the
3 five-year recidivism rate score for 7 was around 27.2
4 percent. So it is greater than the 12 to 15 percent. But
5 the average score on the Static 99R is a 2, and a score of
6 7 is 5.25 times the rate of those offenders.

7 Q Okay. Now, what is the Static 2002R?

8 A So that's a similar measure. It's looking at
9 some the same and some slightly different risk factors.
10 The Static 99R has been much more widely researched. But
11 there is some literature that shows when you combine or
12 look at both the Static 99R and the Static 2002R, they add
13 incrementally to each other. So it's important to score
14 someone on both of those.

15 Q So what was -- did you score the Static 2002R on
16 Mr. Williford?

17 A Static 2002R, yeah.

18 Q 2002R. And what is the scoring range of the
19 Static 2002R?

20 A Negative 2 to 14.

21 Q And what was Mr. Williford's score?

22 A Also, I scored him as being a 7 on the 2002R,
23 which is the well above average risk category.

24 Q What did you learn from that assessment that was
25 significant to you in forming your opinion?

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1 A So people who scored a 7 on the Static 2002R,
2 the five-year recidivism rate in that population, or the
3 people with that risk score, was about 26 percent. So
4 that means out of 100 people with the same risk score,
5 between 23 and 30 would be charged with or convicted of a
6 new sex offense after five years.

7 Thinking about percentiles, a score of 7 on
8 the Static 2002R is higher than a recidivism of 93 point
9 third percentile. So that means out of 100 people, 92 would
10 have a lower score, 3 would have the same score, and 5 would
11 have a higher score.

12 And so when you look at the relative risk
13 compared to people in the middle of the risk distribution
14 with an average score on the Static 2002R, the recidivism
15 rate is like 3.62 times the rate of people in the average
16 range.

17 Q Now, you testified that you had reviewed Dr.
18 Tross' report.

19 A Correct.

20 Q Does Dr. Tross score the Static 99R and the
21 Static 2002R?

22 A Yes.

23 Q What were her scores?

24 A She obtained scores of 8 on both measures.

25 Q Higher?

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1 A Yeah, one point higher on each one.

2 Q And what does number eight, what category does
3 that put him in?

4 A It's also in the well above average risk.

5 Q Now, did you perform the Sexual Violent Risk 20,
6 Version 2?

7 A Yes.

8 Q That's a part of your -- this is a part of your
9 opinion?

10 A Yes.

11 Q Could you tell us what the SRV (SIC) 20 is?

12 A Yes. These are what's called structured
13 professional guidelines. So there are some actuarial risk
14 measures like the Static that is looking at specific
15 numbers when you look at when somebody has those risk
16 factors, what their rate of reoffending and things like
17 that.

18 Structured professional judgment is another
19 way to do risk assessment, where it takes the risk factors
20 from the studies and puts them in a manual so that you can
21 have a structured way of thinking through what are called
22 dynamic risk factors.

23 So in contrast to the static factors, dynamic
24 factors are things that can be changed. They might be
25 difficult to treat, but you can treat them. That would be

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1 something like substance use disorders, sexual interest in
2 children, things that are changeable.

3 And so rather than looking at all the meta
4 analyses, and looking at the different studies and the risk
5 factors, using a structured professional judgment is a good
6 way to do that so you are not missing anything, you're not
7 viping (phonetic) yourself, you really have a structured way
8 to think through this person's risk.

9 Q What did you learn about Mr. Williford's risk
10 factors when you performed this assessment?

11 A So the Sexual Violent Risk 20, Version 2, is
12 broken into three categories of risk factors. The first
13 category are called psychosocial adjustment risk factors.
14 And it was noted that Mr. Williford has a history of
15 problems with sexual deviation in the past and recently.
16 So he's had a stable pattern of sexual arousal to coercion
17 or non-consent based on previous charges and convictions,
18 and current psychological or physiological PPG data.

19 He has psychopathic or antisocial personality
20 disorder, in that he meets diagnostic criteria for
21 antisocial personality disorder. And he has multiple traits
22 of psychopathy. He has possible or partial substance use
23 problems. So there was the presence of substance use during
24 some of his offenses. But he really denied associated
25 problems with substances.

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1 He had relationship problems, so multiple
2 relationships, relationship instability. He had employment
3 problems. He called it job hopping. He also had non sexual
4 offending, so he had a history of having diverse criminal
5 history with numerous arrests and convictions in both
6 childhood and adult.

7 And then for the next category, they're
8 called sexual offending risk factors, Mr. Williford had a
9 history of problems with chronic sexual offending. So
10 multiple charges for sexual offenses from 1984 to 2002.

11 He had physical harm in sexual offending. So
12 he used weapons. He made threats of harming or killing
13 victims. He had psychological coercion in his sexual
14 offending. He intimidated his victim. He had extreme
15 minimization or denial of his sex offending, so he pled
16 guilty to the ones that he was convicted of. But he
17 minimized or denied engaging in those offenses during the
18 interview, both with Dr. Tross and with me.

19 And he also demonstrated attitudes that
20 support or condone sexual offending, to include hostility
21 towards women and women who use substances.

22 And then for the third category, those are
23 the future plans risk factors. It was noted that he has
24 possible partial problems in that he lacks realistic plans.
25 He plans to start a ministry, and that is somewhat

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1 unrealistic, and working with children, based on supervision
2 requirements of not being allowed to be around minors that's
3 unrealistic.

4 He has negative attitudes towards
5 intervention, in that he doesn't see the need for treatment
6 or intervention. And he has negative attitudes towards
7 supervision, in that he had about two probation violations.
8 And we know that probation violations, inability to follow
9 rules, is a significant risk factor for future sexual
10 offending.

11 Q Switching gears, Doctor, I would like to move on
12 to your diagnosis. Did you diagnose Mr. Williford with
13 any personality disorders?

14 A Yes.

15 Q What were they?

16 A I diagnosed him with antisocial personality
17 disorder and narcissistic personality disorder.

18 Q And starting with antisocial personality
19 disorder, could you tell us what the criteria is to be
20 diagnosed with that disorder?

21 A So antisocial personality disorder is a
22 personality disorder in which a person consistently shows
23 no regard for right or wrong, ignores the rights and the
24 feelings of another person. They demonstrate a failure to
25 conform with social norms in relation to laws and

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1 regulations. They are irresponsible, impulsive,
2 aggressive. And so in order to meet diagnostic criteria
3 for antisocial personality disorder, they need to have
4 three symptoms of the disorder. And there also has to be
5 evidence of youth conduct problems before the age of 15.
6 That could include running away from home overnight,
7 cruelty to animals, bullying, fights, arrests prior to the
8 age of 15.

9 Q And based on your review of the records and your
10 interviews and testing that you did, how did you assess
11 that he met these criteria?

12 A So I first noted that he had evidence of youth
13 conduct problems. So he had some cruelty to animals
14 growing up, he stole, he was truant from school. He got
15 into physical altercations with other children. He called
16 himself a bully. And he was adjudicated delinquent for
17 several offenses during his youth, including criminal
18 sexual conduct at the age of 13.

19 So I noticed that there was a presence of
20 conduct disorder, which is a prerequisite.

21 As an adult he's been arrested at least 20
22 times, which demonstrates having a failure to conform to
23 social norm. He is deceitful. He said that he frequently
24 lied to his parents and his romantic partners. He used an
25 alias before. He scored in the defensive range on most of

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1 the tests that I gave him.

2 He provided inconsistent information between
3 and across evaluations. He's been impulsive. So he
4 described himself as job hopper, having lots of different
5 jobs, kind of quitting jobs, leaving school. Kind of
6 impulsive in his relationships, impulsive in his ability to
7 plan ahead.

8 Regarding irritability and aggressiveness, he
9 previously got into numerous physical altercations with
10 others, as both a child and an adult.

11 He demonstrated consistent irresponsibility,
12 not paying for his child support, having his mother support
13 some of his children's mothers, walking off his job. And
14 then he demonstrated a lack of remorse regarding his crimes
15 and his relationship issues that he's had.

16 Q Now, you mentioned you had diagnosed him with
17 narcissistic personality disorder.

18 A Yes.

19 Q What is the criteria for that and how does Mr.
20 Williford fit that?

21 A So narcissistic personality disorder is a mental
22 condition in which people have this inflated sense of
23 their own self-importance. They have a deep need for
24 excessive attention, admiration. They have troubled
25 relationships with other people. They have a lack of

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1 empathy.

2 So for Mr. Williford, he has this grandiose
3 sense of self-importance. So he kind of gave this vague
4 description of having a graduate degree, that he's able to
5 do anything, that others admire him. That the Lord blessed
6 him with his own ministry. He requires excessive
7 admiration. He described how other people at the detention
8 center see him as like an uncle figure, and they all want to
9 emulate him.

10 He has a really significant sense of
11 entitlement. He felt entitled to offend against his
12 victims. He called himself a playboy repeatedly during the
13 evaluation, kind of felt entitled to be this playboy in his
14 sexual relationships. And then co-morbid or going along
15 with his antisocial personality disorder symptoms, he also
16 demonstrated a lack of empathy for his victims,
17 ex-girlfriends, and others, and thinks that everyone is
18 envious of him.

19 Q Now, those are the personality disorders that
20 you diagnosed?

21 A Yes.

22 Q Did you diagnose any paraphilias?

23 A Yes.

24 Q What was that?

25 A So I diagnosed him with other specified

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1 paraphilic disorder, paraphilic coercive disorder.

2 Q Could you tell the Court what that is, and how
3 he demonstrates it?

4 A Yes. So people who have paraphilic disorders
5 are sexually aroused by stimuli other than human
6 consenting adult partners. So, for example, if an adult
7 is sexually aroused by young children, they might be
8 diagnosed with pedophilic disorder, which is a type of
9 paraphilic disorder.

10 Because somebody could become sexually
11 aroused by anything, the way something smells, this table,
12 so long as it is a specific disability. Not all of the
13 potential disorders or objects of arousal are listed in the
14 manual.

15 So there's a category for other specified,
16 where then you would specify what it is that they are
17 aroused by.

18 So somebody might have olfactophilic
19 disorder, which is sexual arousal to a particular odor. So
20 that itself isn't specifically listed in the DSM, but that's
21 something that could be other specified.

22 So for Mr. Williford, he has paraphilic
23 coercive disorder, which is also termed in the literature as
24 biastophilia, and that is characterized by really persistent
25 urges, fantasies, behaviors involving coercive sexual acts

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1 towards non-consenting people.

2 The literature suggests that it reflects an
3 underlying deviant sexual arousal to forced sex and is
4 conceived as the sexualizing of power, control, and
5 dominance over a non-consenting person.

6 So it was my opinion that Mr. Williford meets
7 diagnostic criteria for paraphilic coercive disorder due to
8 the following. So when I looked at the records, he was
9 suspected of three rapes that really had similar MOs. So he
10 threatened his victims with knives and a brick. He hit,
11 kicked, hit with a pipe, and stabbed the hand of one of his
12 victims. He made verbal threats against his victims. Told
13 one of them that he would kill her, and another one that if
14 she wanted to see tomorrow she should just go along with
15 him.

16 Despite reporting that he had been at his
17 child's mother's house during one of these rapes, he left in
18 the middle of the night to rape one of his victims.

19 One of his victims went with him willingly,
20 they drank a beer together before he raped her, which
21 suggests that his actions were motivated by this arousal to
22 the non-consent, in that he had regular sex partners but he
23 sought out women to rape.

24 So this is data that he was aroused by these
25 behaviors. All of the offenses that I reviewed involved

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1 coercion and threats of violence. So during my evaluation,
2 Mr. Williford not only denied this arousal, but he denied
3 engaging in the offensive behaviors. So he wasn't open and
4 forthcoming to discussing his arousal. But when you look at
5 the patterns between the offense behaviors, and then also
6 look at the PPG results and then look at some of the
7 personality characteristics, all of that suggests sexual
8 arousal to coercion that's currently present as he
9 demonstrated this arousal on the PPG currently.

10 Q So, Doctor, if you could put everything together
11 that we discussed, and what did you learn about Mr.
12 Williford's risk factors to reoffend?

13 A It is my opinion that he has a lot of risk
14 factors to reoffend. So in addition to the static and
15 dynamic risk factors that I mentioned, the Static putting
16 him at well above average risk, having a lot of dynamic
17 risk factors, he also has a paraphilic disorder that is
18 related to sexual arousal from coercion and non-consent.

19 But then he also has personality pathology,
20 or personality features that are related to a lack of
21 empathy, callousness. So when you put it together, it is my
22 opinion that he sought out these victims to satisfy his
23 paraphilic arousal to coercion, and that his personality
24 characteristics made him feel entitled to offend against the
25 victim, show no empathy for them, and threaten them.

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1 He told one of the victims that she might as
2 well enjoy it as he was not going to stop until he was
3 finished, which really strongly to me suggests callousness
4 and a lack of empathy.

5 So in addition to this appreciable risk, that
6 his paraphilic coercive disorder diagnosis adds to all of
7 the risk factors that he has, the presence of antisocial and
8 narcissistic personality disorders, and some of those
9 psychopathic traits that he has, significantly contribute to
10 his risk.

11 So specifically he's sexually aroused by
12 non-consensual sexual behavior. And his personality
13 disorders are related to violating the rights of others,
14 lack of empathy, and entitlement.

15 So I think that the personality features,
16 coupled with his sexual arousal coercion, significantly
17 increase his risk for future sexual violence.

18 Q And these risk factors that we just discussed
19 are purportedly significant?

20 A Yes.

21 Q Now, future plans, you discussed a little bit
22 about those. If he is released, what did he tell you he
23 was going to do?

24 A He -- to me he didn't have a very clear plan.
25 So he didn't have an immediate plan. And he wanted to

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1 keep clarifying that this is a five-year plan.

2 So to me it wasn't clear what he will do
3 right when he gets out. I believe that told Dr. Tross that
4 he was going to live with his mother.

5 But to me he wanted to talk about five years
6 down the road. And that his five-year plan is to work in
7 the church and have his own ministry. He wants to print up
8 T-shirts and hats, I think, with the slogan of the ministry.
9 He wants to provide transportation to kids in the community
10 for sports and be a mentor. And he really didn't identify
11 any potential barriers or problems in meeting these goals
12 that he has.

13 Q He is subject to probation or community
14 supervision? Is he subject to community supervision?

15 A Yes. I spoke with one of the attorneys at the
16 Department of Probation, Parole, and Pardon, who indicated
17 that Mr. Williford will be required to complete two years
18 of community supervision. If he violates those
19 conditions, a judge could revoke for up to one year, after
20 which he will be required to start a fresh set of two
21 years of community supervision.

22 However, he noted community supervision
23 cannot go longer than the full 20 years of his original
24 sentence, which would be 12/31/2022.

25 Q So given his plan as he told you, his five-year

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1 plan that he told you and his, you know, probation status,
2 is it realistic that he won't reoffend given all that you
3 have considered?

4 A No. It's my opinion that he is likely to
5 reoffend.

6 Q So, Doctor, this would include now, did you make
7 any conclusions about whether Mr. Williford presents a
8 risk to reoffend?

9 A Yes.

10 Q And is it your opinion that James Williford
11 suffers from unspecified paraphilic disorder, coercive
12 disorder, to the extent that it affects his volition and
13 control to the extent that he is predisposed to commit
14 sexually violent offenses?

15 A Yes.

16 Q Is it your opinion that Mr. Williford suffers
17 from narcissistic personality disorder and antisocial
18 personality disorder to the extent that it affects his
19 volition and control to the extent that he is predisposed
20 to commit sexually violent offenses?

21 A Yes.

22 Q Do you believe that Mr. Williford has serious
23 difficulty controlling this propensity?

24 A Yes.

25 Q Do you believe that he has the propensity to

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR.
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1 commit future sexually violent offenses to such a degree
2 that he is likely to reoffend?

3 A Yes.

4 Q Do you believe that this predisposition poses a
5 menace to the health and safety of others if he is not
6 committed to a secure facility for long-term control,
7 care, and treatment?

8 A Yes.

9 Q Did you draw all your conclusions to a
10 reasonable degree of psychological certainty?

11 A Yes.

12 MR. RUNYAN: Thank you. Please answer any
13 questions Mr. Thompson might have.

14 THE COURT: All right. Mr. Thompson, your
15 witness.

16 Do you need to take a break before we start?

17 MR. THOMPSON: I'm fine.

18 THE COURT: Okay. Go ahead.

19 CROSS EXAMINATION

20 BY MR. THOMPSON:

21 Q Doctor, it's apparent between 1984 and 2002,
22 that Mr. Williford wasn't a very nice person; is that
23 correct? He had a lot of offenses, a lot of arrests.

24 A He was getting into a lot of trouble during that
25 time, yes.

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR.
THOMPSON

1 Q And you understand we are not -- he's gone to
2 prison and he paid his time for that?

3 A Correct.

4 Q That is not what we are here for today?

5 A Right.

6 Q Now, since he was incarcerated he's had one
7 incident in the Department of Corrections; is that
8 correct?

9 A Correct.

10 Q That was in 2004?

11 A Yes.

12 Q Where he slapped somebody?

13 A Yes.

14 Q Are you aware of any other instances since that
15 time?

16 A Nothing that he was -- he had no other
17 disciplinary infractions that he was convicted of.

18 Q So he's had no incidents whatsoever since 2004?

19 A Correct.

20 Q Did you consider that in your evaluation?

21 A Yes.

22 Q How much weight did you give to it?

23 A Well, I -- I considered it, and wrote a whole
24 page about it. So there is in the DSM, and the literature
25 suggests, that after the age of 40, some characteristics

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1 of antisocial personality disorder start to remit a little
2 bit. That might be that somebody doesn't really have as
3 much energy as they did when they were younger to be
4 committing a lot of crimes and things like that.

5 So I do think that some of his aggressiveness
6 remitted since when he was younger. However, it is still my
7 opinion that he has at least three current symptoms of
8 antisocial personality disorder.

9 So just going back to your question about the
10 2004 being the only SCDC disciplinary, so that is not
11 unusual to see with people with antisocial personality
12 disorder. There is a lot of increased structure in these
13 facilities. So if you look at the best practices book, if
14 you look at some of the -- some of the literature, it
15 suggests that this is not unusual and that behavior in the
16 community should be given more weight than institutional
17 adjustments because of this really increased structure.
18 Some people thrive with structure, whatever the reason is.

19 So the symptoms that I still thought that he
20 had, was that he still demonstrates deceitfulness. So he
21 provided a lot of inconsistent information. He's been
22 providing inconsistent information. Some of the
23 defensiveness on the measures that he took. He still has a
24 lack of remorse about his sexual and general offenses, how
25 he's treated others in relationships and otherwise.

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1 He still has a failure to plan ahead. He
2 didn't have an immediate plan for what he will do upon
3 release, didn't really seem to experience any distrust from
4 that. He still has some impulsivity. So there were at
5 least three that were definitely present. And then I also
6 thought that there were some other symptoms that might still
7 be present.

8 So, yes, he had the disciplinary infraction
9 in 2004, but he related that to another inmate snitching on
10 him, which suggests that he may have been engaging in other
11 unlawful behaviors for which he wasn't caught.

12 He also still has really significant
13 interpersonal problems, or problems in his dealing with
14 others, so he is still really calloused. He has a lot of
15 hostility.

16 And when I scored him on the psychopathy
17 checklist, to revise the antisocial fact that, or part of
18 that test, was higher than 81 percent of male offender
19 populations.

20 So taken together, although I noted that some
21 of the symptoms might have remitted since the age of 40 and
22 beyond, he still has these characteristics.

23 Q Okay. How old is he now, do you know?

24 A He is 40 -- at the time of my evaluation he was
25 49, and that was over a year ago. I trust that he's 50

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1 now.

2 Q Okay. Do you have his birthdate -- a date of
3 birth on there?

4 A Yeah. So, his birthdate was in March.

5 Q So as a person gets older, their antisocial
6 personality traits can dissipate or lessen?

7 A Right, yes. We do see them remit, especially
8 after the fourth decade of life.

9 Q After the fourth decade of life, and he is in
10 his fifth decade now?

11 A Yes. So that is not really talked about in the
12 literature, how likely it would increase every decade of
13 life. It's just noted that a lot of the symptoms remit
14 after the fourth decade. But really much less is said
15 about like what happens after the fifth and sixth decade.

16 Q Now you gave him a battery of tests; did you
17 not?

18 A Correct.

19 Q One of them being the Conners Continuous
20 Performance Test?

21 A Yes.

22 Q And did that test -- what is that test for?

23 A So that's looking at attention disorders, things
24 like ADHD or attention deficit, hyperactivity disorder.

25 The reason that that test is given is because when I give

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1 him a long battery with a lot of questions, I want to make
2 sure that he can sustain or maintain attention in order to
3 complete those tests.

4 Q That is a computer-based test?

5 A It is. It is different than the self-report
6 ones. It is a performance computer-based test.

7 Q And the -- what was the indication from that
8 test?

9 A He had some lapses in attention, but really
10 nothing suggested that he had something like ADHD.

11 Q There were a few -- you indicated there were no
12 atypical scores; is that right?

13 A I'm sorry?

14 Q You indicated in your report there were no
15 atypical scores?

16 A Correct.

17 Q What about the substance abuse simple screening
18 test; did you give that?

19 A Yes.

20 Q And what were the results of that?

21 A He scored in the defensive range. Despite the
22 defensiveness noted, there was a high probability that he
23 has or has had a substance use disorder based on his
24 responses. He wasn't reporting emotional pain,
25 prescription drug abuse, acting out behavior, but I noted

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1 that all that needs to be reviewed with caution because of
2 his defensive reporting style.

3 Q And there was alcohol abuse indicated in some of
4 those convictions he had; is that correct?

5 A So actually that test doesn't look at specific
6 substances, but when I reviewed his test results with
7 him -- I go over all of the test results -- he said that
8 he might have overindulged in alcohol sometimes, but he
9 didn't think that he had a problem with it.

10 Q But at least in one of those reports there is an
11 indication that he went to a bar and had drinks when he
12 gave her a ride.

13 A I think they shared beer in the car. I don't
14 think they went to a bar together, based on the
15 information that I have.

16 Q Did you do a personality assessment inventory?

17 A Yes.

18 Q What is that?

19 A That is a self-report objective inventory. It
20 looks at adult personality functioning and
21 psychopathologies, symptoms of a potential mental illness,
22 and looks at interpersonal factors or how the person
23 relates and deals with other people.

24 Q And your findings there was, if I'm correct, his
25 profile was entirely within normal limits. There was no

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1 evidence that suggested a problem with either thoughts or
2 experiences, antisocial behavior, problems with empathy,
3 suspiciousness, moodiness, or impulsivity, depressive
4 symptoms, unusually elevated mood, significant anxiety,
5 health problems, or problems with substance abuse. That's
6 what was in your report; is that correct?

7 A Yes. So that's a self-report measure, so he was
8 not only answering that defensively, there was indication
9 that he was engaging in positive impression management,
10 which means trying to under report things, being
11 defensive. And so he didn't self-report any of those
12 things.

13 So even though he reported substance use
14 issues in other places, he didn't report that at all.
15 Nothing problematic on this test.

16 Q Then farther on down on that, you indicate
17 regarding motivation for treatment, Mr. Williford's
18 responses suggest an awareness of problems and perceiving
19 a need for help dealing with the problems.

20 A Yes. So I noted that score, and when I followed
21 up with him during the follow-up interview I said that
22 that was a finding, and he said, It depends on what the
23 problem may be. And I asked him about his awareness of
24 any problems, and he said technology, and kind of
25 explained that he would need to learn about new technology

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1 advances, but noted that was something that he needed no
2 treatment to address.

3 Q Okay. And then did you discuss the potential
4 for him to get treatment outside of the institution?

5 A I asked him what his plans were, whether or not
6 he's ever had treatment and what his plans were for future
7 treatment.

8 Q Okay. The Abel Assessment for Sexual Interest;
9 you did that, correct?

10 A Correct.

11 Q And what is that?

12 A So there's two parts of the Abel Assessment for
13 Sexual Interest. There is a questionnaire that assesses a
14 wide range of sexual behaviors and fantasies and what --
15 like how sexually arousing or sexually disgusting someone
16 thinks things are. I like to give a questionnaire of
17 sexual behavior, because I'm going to ask all of these
18 questions in my clinical interview.

19 And so there's some literature, not just for
20 sexual behavior, but for things like headaches, and suicide,
21 all kinds of things that some people are more likely to tell
22 you that they have thoughts of suicide or been engaged in a
23 sexual behavior when you ask them in an interview. Some
24 people are more likely to respond to that on a computer when
25 they're in a room by themselves.

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1 So that's why I like to assess it in multiple
2 different ways.

3 So that's the questionnaire part. Then
4 there's also the visual reaction test part of it, where
5 they're looking at slides of clothed men and women of
6 various ages, rating their sexual interests in those images.

7 And then purportedly that test is kind of
8 measuring how long they look at those images to see if it
9 looks like they have sexual interest in those categories.

10 Q And in your report you say that the results of
11 this assessment for sexual interest cannot be used to
12 determine guilt or innocence regarding a specific sexual
13 offense.

14 A Correct. So if I had somebody who was like
15 pretrial charged with molesting a child, I wouldn't be
16 able to say, Oh, because they have sexual interest on this
17 test they are guilty. You wouldn't want to do that with
18 any test, that is what that means.

19 Q May result in scientific use and treatment
20 planning, and risk assessment?

21 A Correct. This is risk, yes. Risk assessment.

22 Q Now, I believe you have indicated in here that
23 there are 23 sexual behaviors that you look at in this
24 assessment; is that correct?

25 A The Abel Assessment is a list of 23 sexual

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1 behaviors, correct.

2 Q And they were regarding three that he did engage
3 in; is that correct?

4 A That he reported engaging in, yeah.

5 Q And those involved -- well, two of them involved
6 prostitutes, and one of them involved four adult women by
7 mutual consent; is that correct?

8 A One of them involved sex with prostitutes, one
9 involved sexual affairs, and one involved sex with
10 strangers.

11 Q But he reported the strangers were prostitutes,
12 right?

13 A Correct.

14 Q Okay. Is that deviant sexual activity?

15 A No.

16 Q Is that evidence of paraphilia?

17 A It might be paraphilia, but likely not a
18 paraphilic disorder.

19 Q Okay. The Hare Psychopathy Checklist.

20 A Yes.

21 Q You indicated is designed to measure personality
22 traits or behaviors related to psychopathy?

23 A Yes.

24 Q And you say that you weren't able to diagnosis
25 him as a psychopath because the scores were not high

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1 enough; is that correct?

2 A That's correct. So he scored one point below
3 the clinical cut-off that would have been enough
4 characteristics of psychopathy to say that he was a
5 psychopath.

6 Q So you can't call him a psychopath?

7 A Correct. He has characteristics of psychopathy,
8 but not a psychopath.

9 Q Well, lots of people may have characteristics;
10 is that correct?

11 A Oh, yes.

12 Q That doesn't mean that they are one?

13 A Correct.

14 Q Now, on the Static 99 and the Static 2002, those
15 are tests -- basically they are ten questions; is that
16 correct, the 99?

17 A The 99, but the 2002 has more questions.

18 Q I see. But the 99 is ten questions, correct?

19 A Yes.

20 Q And of those ten questions, eight of them are
21 scored on whatever has happened in his life prior to going
22 to prison?

23 A Well, they're all scored about prior to the
24 index offense.

25 Q Well, I mean, if he were to commit offenses

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1 while in prison, that might change the score on one of
2 them, correct?

3 A If he had offenses in prison, that might be --
4 if it was a sex offense, that might become the new what is
5 called index offense. And then the sex offense he was
6 serving time for would then count as a prior offense.

7 Q Well, I guess what I'm getting at is, eight of
8 them are inflexible based upon what occurred prior to him
9 going to prison?

10 A They are all inflexible. That's what makes them
11 static. There are things that you cannot change. Like
12 you cannot treat them; they're static.

13 Q Well, I guess you and I have a different
14 definition of inflexible.

15 One of the questions deals with his release
16 date, how old he is at the time of release.

17 A Correct.

18 Q So if he were to be released at a certain age,
19 his score would be one thing; if he is released at another
20 age, his score was something else, right?

21 A It is the age that that they are released from
22 their sex offense. So if he was in prison on something
23 other than a sex offense, the age of release would have
24 been how old he was when he got out of prison for that sex
25 offense.

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1 Q And you said that on the Static 99, his
2 five-year recidivism rate was 27.2 percent, give or take?

3 A Not his, but other people with a score of seven,
4 yes.

5 Q So on an actuarial basis, 27.2 percent?

6 A Yes. And then if you look at the confidence
7 interval between that -- let's see --

8 Q Well, I mean, my question is: I believe you
9 have indicated in your report that the absolute degree of
10 reoffending cannot be directly inferred to a relative
11 range; is that correct?

12 A I am not following.

13 Q Well, I am just reading from your report on
14 Page 35. Absolute degree of reoffending risk cannot be
15 directly inferred from a relative range.

16 A Right, because it is not an individual risk
17 assessment to him. It is people who have similar
18 characteristics, comparing that to the studies.

19 Q So if his number falls on the actuarial table at
20 27.2 percent, then that means that, if I can do math in my
21 head, 62.8 percent of the people would not reoffend in the
22 five years?

23 A I believe you, that that math is right. Yes, so
24 the average rate of reoffending is 12 to 15 percent.
25 People with a seven were in the well above average range,

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1 with about 27.2 percent.

2 Q All right. And what evidence do you have to
3 show that he will fall within that 27.2 percent range, as
4 opposed to that 62.8 percent range?

5 A Just looking at the number of risk factors that
6 he has, that is what formed the basis of the creation of
7 the Static 99 and the static factors that went into that
8 score.

9 Q So are you saying that beyond a reasonable doubt
10 you believe he will reoffend?

11 A I don't think you could say that about anyone
12 anywhere. I think that based on his risk factors and his
13 mental abnormality, and his personality disorder, he is
14 likely to reoffend.

15 Q But you can't say that he certainly will.

16 A I can say that it's likely, but beyond a
17 reasonable doubt. I don't know how you would measure
18 that. He would have to say, yes, I'm 100 percent going to
19 reoffend. But otherwise, I don't know how to be -- how
20 you would figure that out.

21 Q Now, two or three times in your testimony you
22 talked about him having unreasonable expectations, and one
23 of them I think was you said he talked about becoming a
24 minister.

25 A Yes.

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1 Q How is that unreasonable?

2 A I don't think that I said unreasonable, I think
3 I said unrealistic.

4 Q Okay. How is that unrealistic?

5 A So part of his supervision requirements is that
6 he cannot have contact with people under the age of 18.
7 When I asked him to describe the ministry, he said that he
8 was going to provide transportation to minors, something
9 about sports. It was unrealistic because it wasn't really
10 clear what the ministry, aside from that, was going to do.
11 He talked about having like a slogan and putting it on
12 T-shirts. So, to me, it seemed unrealistic as a viable
13 future plan for him.

14 Q Were you aware that he worked with the prison
15 chaplain while he was in prison?

16 A Yes, he told me that.

17 Q Were you aware that, since he's been over here
18 in the jail, he's runs a morning bible study every
19 morning?

20 A I don't recall if he told me about that or not.

21 Q Yeah. Would that not be considered a ministry?

22 A I don't know. Would that be a ministry, to lead
23 a bible study?

24 Q Well, we are dealing with definitions here. And
25 you said one of his unrealistic plans was to have a

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1 ministry.

2 A The way that he described it to me was
3 unrealistic. He didn't mention the bible study in the
4 plan for the ministry, only the church giving him a
5 building to store T-shirts that he was going to print a
6 slogan on, and the working with minors, which is
7 unrealistic because he will not be allowed while he's
8 under community supervision.

9 Q Now, as to the narcissistic personality
10 disorder.

11 A Yes.

12 Q I believe you said it required the finding of
13 five different things; is that correct?

14 A I assume. I believe so. Yes, five or more.

15 Q All right. Thank you.

16 What five items did you conclude he had
17 that would give rise to the narcissistic personality
18 disorder? I believe it's Page 39.

19 A Let's see. Grandiose sense of self-importance.
20 Sorry, 39?

21 Grandiose sense of self. Excessive
22 admiration.

23 Q That's two.

24 A Sense of entitlement. Lack of empathy for his
25 victims. And believing that other people are envious and

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1 want to emulate him.

2 Q Now, just above that paragraph you don't have
3 anything about other people being envious of him. You say
4 that one of the factors to be considered was whether or
5 not he was envious of others.

6 A I think that that goes into the belief that he
7 is special and unique, that he requires excessive
8 admiration. I mean, all of those are part of narcissistic
9 personality disorder. Being arrogant.

10 Q Well, you said that one of the five that you
11 depended on was him claiming that others are envious of
12 him.

13 A Right. I mean, that's an example of somebody
14 being arrogant, requiring excessive admiration, believing
15 that he's special and unique, that everybody envies him.

16 Q But that is not one of the ones you listed as
17 being a criteria.

18 A I think if you look above where I start talking
19 about him, so five or more symptoms characteristic of
20 disorder, including a grandiose sense of self-importance,
21 a preoccupation with fantasies of success, power, or ideal
22 love, belief that he or she is special and unique,
23 requires excessive admiration, has a sense of entitlement,
24 is interpersonally exploit -- lacks empathy, is envious of
25 others, and is arrogant.

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1 Q You said he's envious of others?

2 A Yes. But the belief that others are envious of
3 him is getting into the arrogance, the requiring excessive
4 admiration, the believing that he's special and unique.

5 Q Well, that goes back to -- you already said that
6 before. That's number two. You said he had -- his
7 criteria was, grandiose sense of self, that was number
8 one. Then the next one you said was that he requires
9 excessive admiration.

10 A Yes.

11 Q And now you say this is a part of that?

12 A Yes. I do think that that factors into that. I
13 also think that he's arrogant. I think that he's been
14 really exploitative of other people. I mean, I think that
15 he clearly, fully meets for narcissistic personality
16 disorder.

17 Q So it is -- there is not five separate ones
18 then. You include two of them in one.

19 A Yes. I think, in general, he has all of those
20 symptoms.

21 Q Now, on the other specified paraphilic disorder,
22 in your report you indicate that paraphilia by itself is
23 not necessarily justifiable or require clinical
24 intervention; is that correct?

25 A Right. A paraphilia is a part -- you need to

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1 have a paraphilia before you can diagnose a paraphilic
2 disorder. So paraphilias on their own don't require
3 treatment. But once it turns into a paraphilic disorder,
4 that is a disorder.

5 Q Is there any one particular tool that you use
6 that stands alone and indicates risk?

7 A I'm sorry, can you ask it again?

8 Q Of all the tests and tools that you use to
9 assess Mr. Williford, is there any one that can stand
10 alone by itself and say he is going to reoffend because of
11 this?

12 A I don't think any test should be used in
13 isolation. I think they should all build upon each other
14 and be data points. So, I'm going to say no.

15 Q And that gets, in your report you say risk
16 prediction is not an exact science, right?

17 A Correct, yes.

18 Q And research is still developing in the field.

19 A Definitely.

20 Q And on down below that where you indicate
21 actuarial instruments only indicate the likelihood that a
22 person belongs in a particular group.

23 A Right. So it tells you nothing about the
24 individual. Only when you identify the number of
25 characteristics that are similar, it tells you about

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1 people who had that score. But you don't know if you are,
2 you know, missing something that would have made their
3 score higher. Or you don't know if that's actually
4 correct for an individual, as comparing to a group of
5 people.

6 Q It's like life insurance.

7 A Exactly.

8 Q But it predicts when we are going to die based
9 on numbers?

10 A Right. Not you specifically, but based on other
11 people who have similar characteristics.

12 Q The population as a whole?

13 A Uh-huh, yes.

14 Q And nothing as definitive as to a particular
15 individual, is it?

16 A That's correct.

17 Q Now, you had Dr. Tross' report, right?

18 A Yes.

19 Q And you looked at it?

20 A Yes.

21 Q And if -- I may be simplifying this, but let me
22 -- basically her report is, is that all of this that
23 occurred was a result of his environment that he was in at
24 the time; is that correct?

25 A That wasn't my reading of it. My reading of it

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1 was that he previously would have met for antisocial
2 personality disorder, but she didn't think that he met
3 currently.

4 Q All right. Well, let me ask you this question
5 then, let's change it around.

6 How would the environment that he was in
7 before, and I mean I think that you were aware he was
8 running with a group, he was getting in trouble, he was
9 having trouble at school, all of that. How would that
10 affect any of this antisocial personality, narcissistic,
11 or the other specified paraphilia?

12 A I'm not sure how -- how would it -- how was his
13 group?

14 Q Well, would that have any basis or reason as to
15 why these occurred, and why you made the diagnosis that
16 way, or did you totally ignore those, those factors?

17 A If I'm following, I think that if all his
18 offenses had co-defendants, if all of the rapes had other
19 people where it was unclear, but I mean, he was arrested
20 over 20 times as an adult, not with a big group of people
21 where you might say, maybe this is somebody who is being
22 influenced by someone else, if that's what you're asking.

23 Q A person can change, can they not?

24 A Yes. I think that a lot of disorders are
25 treatable. And somebody who is motivated to go through

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1 treatment, you can certainly treat them.

2 Q And there is nothing that has occurred since
3 2004 that would indicate he hasn't changed; is that
4 correct?

5 A Nothing -- no -- can you say it more time?
6 Nothing that has occurred since 2004 --

7 Q Since 2004, nothing has occurred to indicate
8 that he has not changed?

9 A Well, he hasn't undergone any treatment, and he
10 doesn't believe that he needs treatment. So I don't --
11 and he showed current arousal and still demonstrated these
12 personality characteristics, so I would say I didn't have
13 any data that he has changed. Some of the aggressiveness
14 and fighting, I think, has remitted in the fourth decade.

15 MR. THOMPSON: Thank you.

16 THE COURT: Anything further from this witness?

17 MR. RUNYAN: Just briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. RUNYAN:

20 Q Dr. Gottfried, since 2004 where has
21 Mr. Williford been?

22 A He has been in prison. And then at some point
23 in 2020, I believe, he got transferred to the detention
24 center. But he's been incarcerated continuously since
25 then.

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1 Q And that's a controlled, structured environment,
2 correct?

3 A Yes.

4 Q There was some testimony about the Static and
5 how many questions you ask, and whether they are
6 inflexible or not. Static is protective, isn't it?

7 A It could be. So if somebody got zeros or
8 negative on everything, that would put them at a really
9 low risk to reoffend. I guess I'm not sure what you mean
10 by protective.

11 Q I guess one of the questions is their age. Does
12 the Static move, are there certain questions that will
13 change over time that makes it protective to this person?

14 A Yes. As somebody gets older on the Static,
15 their risk score or the number of points they're assigned
16 for their age will decrease even into the negative range.

17 Q So as Mr. Williford ages, his score will go
18 down?

19 A Yes. Provided that he doesn't have new charges
20 or new victims, that would increase some of the other
21 items.

22 But if everything remained the same, he would
23 go into the negative range on those.

24 Q But these protective factors regarding age, are
25 they significant for Mr. Williford? I mean, you scored

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1 that?

2 In other words, has he lost points on the
3 Static because of his age?

4 A Let me take a look at that.

5 Yes, he had a negative one based on his age
6 at the time of assessment. So negative one on the age at
7 release.

8 Q And he still scored a seven?

9 A Yes.

10 Q Despite the protective factors?

11 A Correct.

12 Q Despite the unreported risks that you testified
13 to on the record?

14 A The potential for it, correct.

15 Q Okay. Beyond a reasonable doubt, that is a
16 legal standard for the Judge, correct?

17 A Correct.

18 Q Okay. So your only question, your only -- what
19 is the real question you are asked to answer?

20 A Does he have a mental abnormality or personality
21 disorder that makes him likely to reoffend if not confined
22 for his care, safety, and treatment?

23 Q And you came to a conclusion that he does,
24 correct?

25 A He is likely to reoffend.

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1 Q And you don't rely on just one data point?

2 A Correct.

3 MR. RUNYAN: Nothing further, Your Honor.

4 THE COURT: Anything further from this witness?

5 MR. RUNYAN: Nothing from the State, Your Honor.

6 MR. THOMPSON: No, sir.

7 THE COURT: Thank you, Dr. Gottfried. You can
8 step down.

9 THE WITNESS: Thank you.

10 THE COURT: All right. We're going to take a
11 short break.

12 (Recess.)

13 THE COURT: Okay. Let's go back on the record.
14 Call your next witness.

15 MR. RUNYAN: Your Honor, at this time the State
16 would rest.

17 THE COURT: Okay. The State has rested.

18 Mr. Thompson?

19 MR. THOMPSON: Your Honor, I'll state for the
20 record, I'll make a Motion for Directed Verdict at this
21 time. The evidence doesn't rise to the level of
22 reasonable doubt.

23 THE COURT: Thank you, Mr. Thompson.

24 As you know, under directed verdict, the Court has
25 to consider not the weight of the evidence, but the

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1 existence of the evidence. And I find that there is
2 evidence in the record, when considered in the light
3 most favorable to the State, that would tend to prove
4 their case. So I would deny your Motion for Directed
5 Verdict at this time.

6 Is the defense ready to proceed?

7 MR. THOMPSON: We are.

8 THE COURT: Okay. Call your first witness.

9 MR. THOMPSON: Call Dr. Rozanna Tross.

10 Thereupon,

11 DR. ROZANNA TROSS

12 was called as a witness, having been first duly sworn,
13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. THOMPSON:

16 Q Doctor, will you give us your full name?

17 A Rozanna Tross.

18 Q And are you in the practice of psychology?

19 A I am.

20 Q You are in private practice now, correct?

21 A Yes, sir.

22 Q Have you dealt with Mr. Williford?

23 A I have.

24 Q And where were you working at that time?

25 A At that time I was employed with the Department

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1 of Mental Health.

2 MR. RUNYAN: Your Honor, if Mr. Thompson is going
3 to qualify Dr. Tross as an expert in forensic
4 psychology, we stipulate to her qualifications.

5 MR. THOMPSON: That is fine.

6 THE COURT: So the witness would be admitted as an
7 expert in forensic psychology without objection.

8 BY MR. THOMPSON:

9 Q I believe you test -- you just testified that
10 you worked for the Department of Mental Health when you
11 dealt with Mr. Williford?

12 A Correct.

13 Q Was that as a result of a court order, that you
14 evaluated him?

15 A Yes.

16 Q And was somebody else associated with you when
17 you evaluated him?

18 A Yes.

19 Q And who was that?

20 A That was Dr. Christopher Gilliland.

21 Q And was Dr. Gilliland in training at the time?

22 A Not exactly. He was a new employee, and so as a
23 result he was paired with me to do this evaluation.

24 Q You were the chief psychologist; is that
25 correct?

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1 A Correct. At that time, chief psychologist
2 represented licensed psychologists. And because Dr.
3 Gilliland had newly moved into the state, he wasn't yet
4 awarded his license in the State of South Carolina.

5 Q But with the Department of Corrections (SIC),
6 you were chief psychologist?

7 A With the Department of Mental Health, yes.

8 Q I'm sorry, with the Department of Mental Health.
9 You can tell I used to do criminal law.

10 A Yes.

11 Q Okay. Did you have documentation and records to
12 look at when you did your evaluation?

13 A Yes, we did.

14 Q And could you tell us what some of those records
15 were?

16 A Usually we get a file that contains everything
17 prior to the State's petition to pursue sexually violent
18 predator status that includes prior convictions for sexual
19 offenses, allegations of sexual offenses at times.
20 Sometimes it includes probation and parole records, SCDC
21 records, and anything related to the petition that was
22 submitted.

23 Q Did you also do telephone interviews with
24 people?

25 A Right. So after we interviewed Mr. Williford,

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1 we conducted numerous telephone interviews to corroborate
2 information he had told us, or to substantiate information
3 that he had told us.

4 Q And I'm sorry, again, I'm hard of hearing. I'm
5 having trouble hearing. So try to speak into the
6 microphone if you will.

7 A Yes. We conducted numerous telephone
8 interviews.

9 Q Okay. And did those telephone interviews
10 consist of interviews with a relative of Mr. Williford's?

11 A Yes. We spoke with probation and parole. We
12 spoke with family court. We spoke with Mr. Williford's
13 mother. We spoke with several people at Tyger River
14 Correctional Institute, or Institution, as well in-prison
15 industries. And that looks like that covers who we talked
16 to.

17 Q In the course of your evaluation, did you
18 establish a history of Mr. Williford's life prior to going
19 into prison?

20 A Yes.

21 Q And can you tell us a little bit about that?

22 A Yes. We always start with just a thorough
23 background, review of all the records that tells us
24 aspects of his history, aspects of his life. As well as
25 when we meet with him, we do a thorough interview and ask

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1 him questions about his life and his upbringing.

2 What he described was that he was primarily
3 raised by his mother, though he still had contact with his
4 father. He is in and out of his life. He described himself
5 as pretty hard-headed as a child, very stubborn.

6 One of the notable things that he talked to
7 us about during our interviews with him is that his father
8 and grandmoth -- grandfather were both womanizers and very
9 much encouraged just sexual promiscuity, where sort of an
10 amoral stance towards relationships, women, use of women for
11 sexual purposes. Substance abuse and criminal behavior was
12 not unusual either.

13 He had a negative peer group that he
14 associated with. Academics was not highly valued, in terms
15 of completion or being straight A student. And just sort of
16 being in the streets, of the streets, kind of that
17 mentality. I do what I want when I want. He described
18 being raised that way, and then pursuing that lifestyle
19 early on.

20 Q Did he run with a gang, things like that?

21 A He didn't call it a gang, but he noted kids in
22 the neighborhood that he associated with, he referred to
23 it as a group. But he denied official gang membership.

24 Q Were there things that you would consider, or
25 some of those things, would you consider those to be a

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1 negative influence on his upbringing?

2 A All of those would be negative influences on his
3 upbringing.

4 Q So his environment as a child coming up, good,
5 bad, indifferent?

6 A Well, part of what we are asked to do is
7 determine whether or not, if there's something going on
8 with him that might predispose him to engage in the
9 behavior that he's in front of us for. And in this case,
10 it's sexually violent behavior. So in looking at his
11 upbringing it is important to try to understand his
12 motivations and -- and interests in engaging in certain
13 types of behavior.

14 Q I guess my question, what I am trying to get to
15 is this: The State has testified. You have been in the
16 courtroom while they testified, right, Dr. Gottfried
17 testified?

18 A Yes.

19 Q They testified that this is, in their opinion,
20 either a personality disorder or a mental abnormality.

21 MS. SHAW: Objection, Your Honor. That's not what
22 the testimony actually says. The person had two
23 personality disorders and a mental abnormality in the
24 form of a paraphilia. That's what Dr. Gottfried
25 testified, and the record is clear on that.

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1 THE COURT: Okay.

2 MR. THOMPSON: Okay. Two personality disorders
3 and --

4 THE COURT: Just restate your question.

5 BY MR. THOMPSON:

6 Q I guess what I'm getting at, Doctor, can this be
7 explained as -- does it have to be a mental abnormality,
8 or a personality disorder, or a combination of the two to
9 explain his actions in the past? Or could it be the
10 environment that he grew up in?

11 A Correct. There's no prerequisite that he must
12 have a personality disorder abnormality in general to
13 explain his behavior. That is just what we have been
14 asked to determine, is whether or not those one or two of
15 those things exist that predispose him to engage in this
16 type of behavior. Our opinion is that neither one of
17 those are what is explaining his behavior.

18 Q Now, you did a Static 99; is that correct?

19 A Yes.

20 Q Would you tell us what a Static 99 is?

21 A It's an actuarial risk assessment tool that
22 takes into account historical factors for whole groups of
23 sex offenders and analyzing them, if they have certain
24 historical traits, and the rate at which they tend to
25 recidivate.

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1 So the Static 99 has pulled those items
2 together in a checklist fashion, if you will. You either
3 get a point for something, or a zero if that factor is not
4 present for them. The more factors they have, the higher
5 the estimation of their risk.

6 Q And what was your score on the Static 99?

7 A We scored him an eight.

8 Q That is higher than Dr. Gottfried?

9 A Yes.

10 Q Does that not indicate that he's likely to
11 reoffend?

12 A Well, a risk assessment encompasses more than
13 the static factors.

14 Q So that is just one element of your
15 consideration?

16 A Yes.

17 Q What about the Static 2002R?

18 A It is in the same category as the static
19 factors. So both of those same scored at incremental
20 validity to one another. Both of those measures he scored
21 in the well above average range on static factors compared
22 to other sex offenders with the same score.

23 Q And, again, that's higher than what Dr.
24 Gottfried scored?

25 A Right. The error of measurement is plus or

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1 minus one. And either way, both scores are in the exact
2 same category, so we were not concerned that our score was
3 slightly different.

4 Q Let's talk about personality disorders. Did you
5 find that Mr. Williford had a personality disorder?

6 A We did not.

7 Q And why not?

8 A Personality disorders are a combination of
9 interpersonal problems, cognitive problems, affective
10 problems, and then impulse control. So first thing we do
11 is determine whether or not somebody has a personality
12 disorder before we describe what type of personality
13 disorder. They are the characteristics that combine to
14 create a personality disorder are inflexible and pervasive
15 and across multiple settings. They don't change with
16 context.

17 So what we have with Mr. Williford is a
18 marked difference between his early behavior and his
19 subsequent behavior once he's incarcerated. What we wanted
20 to look at, in addition to that, is whether or not the
21 context or the environment itself was the cause of that
22 change. Because if it is, it would point to it not being a
23 personality disorder, but a product of environment.

24 Sometimes people can curb certain aspects of
25 their personality when they are incarcerated. However, to

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1 see sustained change, marked deviation from a prior set of
2 behaviors to where somebody is behaving now, would not be
3 accounted for simply because they were in an incarcerated
4 setting, if it were a personality disorder.

5 So what we found is that his early lifestyle,
6 neighborhood, and lack of parental involvement in a positive
7 way, and supervision in a positive way, sort of fostered
8 this environment where he was running the streets, living a
9 lifestyle of I will do what I want when I want. And it was
10 somewhat taught by -- by his own description of his father
11 as well as grandfather.

12 Multiple relationships were encouraged,
13 duplicitous relationships even. And these were the
14 decisions that he was making that also led to his sexual
15 offenses.

16 Once he was incarcerated this last time, he
17 has got, I believe, 18 years now, of consistent behavior
18 where his interactions with others have been appropriate,
19 his thought processes have been appropriate when interacting
20 with others. He's expressed a great deal of remorse and
21 regret over his earlier actions. Recognizing that this
22 duplicitous lifestyle use of sex as a conquest and as a
23 status symbol in the neighborhood, has not only created
24 problems in his own life, but been incredibly unhealthy
25 behavior for him, as well as against the type of person he

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1 has chosen to be now and plans to be going forward.

2 So collectively that information is telling
3 us that this is a product of environment and circumstances
4 rather than an inherent personality disorder that is
5 inflexible and pervasive and doesn't change depending on
6 context.

7 Q Had you done this evaluation prior to 2005, is
8 there a possibility you might have suggested at that point
9 in time that there was a personality disorder?

10 A It is possible at that time, simply because
11 everything up to that point had described or -- had
12 described similar behaviors. We didn't have any marked
13 deviation or change, regardless of context. He seemed to
14 be engaging in that same mindset. Although there were
15 still strong indicators at that time that his environment
16 was the catalyst, if not the teaching tool for that type
17 of behavior.

18 Q Well, since 2005, there has been no problems,
19 correct?

20 A I believe even since his incarceration in
21 general, he slapped an inmate on one occasion in 2004, but
22 his initial incarceration I believe was in 2002, and we
23 haven't had any problematic behavior since that time.

24 Q So his actions since 2005 are not indication of
25 a diagnosis of personality disorder; is what you are

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1 saying?

2 A Correct.

3 Q Or his lack of action?

4 A Either.

5 Q Either. Okay.

6 Now, what if he were to continue to display
7 one or two of these symptoms of anti-personality disorder,
8 would that be sufficient for one diagnosis of
9 anti-personal -- personality disorder?

10 A Well, no. Because, again, the baseline has to
11 be that he meets criteria for personality disorder, which
12 encompasses marked deviation and deficits in interpersonal
13 functioning, cognition, so the way he thinks and
14 interprets the world around him. Affective control. As
15 well as levels of impulsivity.

16 So he has to have at least marked deficits in
17 two of those categories to meet criteria for a personality
18 disorder. Over the last, what, 18 years, or since 2004, if
19 we want to go from his last behavioral infraction, we
20 haven't seen deficits in any of those areas. Other than he
21 is, of course, defensive and he minimizes his level of
22 responsibility. But that is not the same thing as impaired
23 cognition about the world, himself, and how he interacts
24 with other people.

25 Q Now, you did -- you were in the courtroom and

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1 you heard Dr. Gottfried testify as to narcissistic
2 personality disorder. You did not find any, did you?

3 A We did not.

4 Q And can you explain to me why you did not?

5 A Well, we did consider a variety, again, of
6 personality disorders, but first we looked at whether or
7 not he met criteria for a personality disorder.

8 A narcissistic personality disorder in our
9 interactions with him, and we met with him on more than one
10 occasion, and we also talked to a variety of people who have
11 interacted with him for years, and nobody described anything
12 that would be suggestive of haughty, arrogant, entitled
13 attitude, a need for admiration, or the other
14 characteristics suggestive of narcissistic personality
15 disorder.

16 We did not see that with him when he was
17 interviewing with us. And like I said, we didn't see it in
18 the collaterals when we spoke with them. And then we also
19 presented his case in particular to our collective group of
20 psychologists and asked for their feedback, too. And none
21 of our colleagues suggested that narcissistic personality
22 disorder was an area to also consider, or that he would have
23 met criteria for that disorder.

24 Q Well, now, I believe you were aware that his
25 plan was he was going to have a ministry; is that correct?

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1 A Yes.

2 Q Is that an indication of narcissistic
3 personality disorder?

4 A Nope.

5 Q Does a ministry mean that you have to have a
6 huge church or a congregation?

7 A No. What he is describing to us is somebody
8 who, in prison, while incarcerated, decided to, instead of
9 run the streets and follow in the footsteps of negative
10 people while in the community, to sort of change to a
11 religious sense, reconnect with his faith, reconnect with
12 a church. And he did that throughout his time while
13 incarcerated.

14 We spoke with his chaplain, who described
15 somebody who -- and I don't want to get this wrong, but she
16 described him as reliable and dependable, and somebody who
17 sort of walked the walk, didn't just give a bunch of lip
18 service.

19 She also went out of her way to say that
20 there has been no complaints from of other inmates or
21 suggestions of impropriety while in prison. Staff had not
22 complained about him or had questions about his motivations
23 or ulterior motives. And his interactions with her in a
24 religious situation have been consistent.

25 And he has talked about that, not only with

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1 correctional staff, but with his mother and other family
2 members, and made plans to pursue church-based activities in
3 the community and start his own.

4 Q Could that be evidence of the fact that he's
5 changed his ways?

6 A Yes.

7 Q Now, she also diagnosed him with paraphilic
8 disorder. Did you make a diagnosis as to paraphilic
9 disorder?

10 A We did not.

11 Q And can you tell me why you did not do that?

12 A Rape itself --

13 Q I am sorry?

14 A Rape itself is a criminal offense. All rape is
15 a crime. And all rape automatically assumes that there is
16 a non-consenting victim. So the mere presence of rape
17 itself is not indicative of a paraphilia or a paraphilic
18 disorder.

19 Rape itself is violent. Rape involves
20 aggression, sometimes the use of weapons and force,
21 manipulation, coercion. It is not uncommon to see those
22 things in rape. So the mere presence of them does not
23 suggest that there is paraphilic behavior.

24 What we looked at in terms of establishing
25 whether or not there was a paraphilia, because, again, you

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1 have to have that before you can suggest a certain type of
2 paraphilic disorder.

3 If we looked at his sexual history in
4 general, we looked at his sexual behaviors, his attitudes,
5 and then explored his motivations for engaging in sexual
6 assault, we have an absence of hypersexuality. We have an
7 absence of pornography addiction. We have an absence of the
8 use and/or abuse of violence or coercive pornography or
9 sexual behavior with consenting partners.

10 We also have him disclosing between 50 and 00
11 sexual partners, none of whom reported or made allegations
12 on an official note that he was trying to coerce them into
13 sexual behavior or raping them despite their willingness to
14 engage in sexual behavior.

15 So then really what we had is his sexual
16 convictions themselves, or the third allegation were the
17 only aspects of behavior that was problematic, other than
18 just promiscuous and duplicitous. We had this now, this
19 separate level of violence and coercive behavior. But in
20 those offenses, too, while there was some script-like
21 behavior, there was some similarities between the offenses,
22 there was a level of violence, absolutely. But what we
23 found in each of them is the moment --

24 MR. THOMPSON: Judge, may I sit down just a
25 moment?

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1 THE COURT: Yes.

2 MR. THOMPSON: My sciatica is killing me.

3 THE COURT: Yes, sir, you can be seated if you
4 want. If you need to just sit and ask your questions,
5 pull the microphone up and you can continue questioning
6 seated. I don't want you to pass out on us.

7 MR. THOMPSON: Well, I won't pass out, but it
8 don't feel good.

9 MS. SHAW: Your Honor, just -- I don't know about
10 Mr. Thompson, but he's put in a bad position, so maybe
11 we can take a ten-minute break. My cross is not
12 anticipated to be particularly long, but I would just
13 like to make sure that he's in as good a position as he
14 needs to be.

15 MR. THOMPSON: And I'm not far from being
16 finished, Judge.

17 THE COURT: Okay. Well, if you need a break, we
18 can take a break. But if you need to continue --

19 MR. THOMPSON: If you don't mind, let me sit,
20 relax, and get a drink of water for a minute.

21 THE COURT: Okay. Well, we just -- we can do
22 that. We'll just take a short break.

23 MS. SHAW: Thank you, Your Honor.

24 THE COURT: And, Doctor, you're on the witness
25 stand, don't discuss your testimony with anyone during

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1 our break.

2 THE WITNESS: Yes, sir. Is it okay to just stay
3 up here?

4 THE COURT: Yeah, you can stay up there if you
5 want to, or if you want to stretch your legs, you can.

6 THE WITNESS: Thank you.

7 (Recess.)

8 MR. THOMPSON: My heart is calming down now, I
9 think I'm ready to go.

10 THE COURT: Okay. Well, let's go back on the
11 record.

12 BY MR. THOMPSON:

13 Q Doctor, I'm -- I'm sorry. I forgot the last
14 question I asked you. Do you remember?

15 A I forgot it, too, sir.

16 Q Okay. It had to deal with paraphilic disorders
17 and why you believe there is not any.

18 A Yes. Yes. You were asking me specifically why
19 his rape behavior wouldn't be indicative, or why we found
20 that it wasn't indicative of a paraphilic disorder.

21 Yes? Okay. So, yes, to do that, again,
22 somebody has to have a paraphilic interest. Paraphilic
23 interest isn't demonstrated by behavior alone.

24 Because really what paraphilic behavior is
25 looking at is somebody's internal thoughts, feelings,

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1 fantasies, if you will, about a given sexual type of
2 behavior.

3 Sometimes they need that sexual behavior is
4 simply to be aroused or to achieve and/or maintain a certain
5 level of sexual interest. So you are not going to see
6 paraphilic behavior in an isolated setting like just a
7 sexual offense.

8 So we look at more than just convictions or
9 just offense behavior. We look at their sexual behavior all
10 along, throughout their life, consensual and non-consensual.
11 We look at their use of masturbation habits, and their
12 pornography use as well.

13 So in Mr. Williford's case, what we have is
14 more often than not he is engaging in consensual sex with
15 adult partners who are willing to have sex with him. Some
16 of them, even knowing that he is engaged in multiple
17 relationships at the same time, or duplicitous
18 relationships. At times they didn't.

19 As well, we don't have the use and abuse of
20 pornography. The pornography he has viewed seems to be
21 themes of consensual sex between adults. We don't have
22 compulsive masturbation or anything to suggest that there's
23 a hypersexual drive or interest, that there's a compulsive
24 sexual component to be here.

25 And so looking at just his offense behavior,

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1 because, again, he's reported to us, he estimated between 75
2 and 100 different sexual partners. I think in a different
3 report he said around 50 to 100. Either way.

4 And he started having sex around 15, I
5 believe it was. So between the age of 15 and then when he
6 was incarcerated in '02, you know, that is a significant
7 number of sexual partners. And, again, the majority of that
8 behavior has been consensual.

9 The offense behavior itself, while indeed
10 violent and coercive, and there are some patterns in the
11 sense that he's picking up women on the side of the road,
12 he -- and the use of violence, as well as weapons and
13 threats. That seemed to stop when he got compliance from
14 the victim, versus what the literature would suggest as well
15 as what I've seen in interviewing lots of paraphilic
16 rapists, that behavior is likely to continue when that is
17 the driving force behind what the sexual arousal is linked
18 to.

19 So it's collectively all of that information,
20 which is why we are saying that his sexual offending is a
21 continuation of his sense of entitlement -- what's the right
22 word -- the lack of concern for women, and his sense of when
23 I want sex, I can go have it. And his attitude thinking
24 that when women are out at night by themselves, or alone,
25 they want sex and I can go take it from them.

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1 That seems to be more -- and, again, that's
2 part of his environmental factors and his thinking processes
3 around sex in general, that sort of seem to be feeding his
4 offense behavior, rather than a separate, standalone
5 paraphilic interest.

6 Q Now, did Mr. Williford exhibit any dynamic risk
7 factors?

8 A Yes.

9 Q Can you tell us what those are?

10 A Yeah. So dynamic factors are anything that is
11 amenable to change or could change. They are fluid, if
12 you will. And research would suggest that there is 16
13 specific risk factors uniquely tied to the increasing the
14 rates of sexual recidivism. And we assigned multiple for
15 him. Lack of emotional, intimate relationships with
16 adults. He described indiscriminate relationships; lack
17 of meaningful, healthy relationships.

18 Because, again, they were duplicitous. And
19 by his own account, he wasn't overly serious with any of
20 these women. It was for cohabitation. It was for sexual
21 gratification, things like that, rather than something of a
22 healthy nature and having an emotionally intimate connection
23 with others.

24 Offense supported attitudes we assigned, most
25 definitely. Because, again, he externalizes the blame for

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1 his actions, minimizes the significance of his behavior.

2 And seems to think that if women are dressed a certain way,
3 or out at a certain time, or using drugs with him, that it
4 is okay to then take sex from them.

5 Hostility towards women. We have seen that
6 throughout his relationships with women, where profanity and
7 dominance and even violence at times seems to be okay inside
8 the relationship. He describes women as not being able to
9 be trusted and deliberately manipulating or making up
10 allegations about sexual assault.

11 And then callousness. Prior to coming to
12 prison, by his own account, he acknowledged being pretty
13 indifferent to his actions and how that impacted others.

14 Q Would those dynamic risk factors not be
15 indicative of paraphilia?

16 A A paraphilia?

17 Q A paraphilia?

18 A No, sir. They are simply risk factors that
19 increase the likelihood of re-offense of a sexual nature.
20 They aren't indicative of themselves of a diagnostic
21 category.

22 Q So they are not evidence of an underlying
23 personality disorder or mental abnormality?

24 A No.

25 Q Do you have any indications whether he

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1 experienced any of these problems since 2005?

2 A Offense supported attitudes, yes.

3 Q Okay. Is that the only one?

4 A Well, that is the one -- and I would suggest
5 that there is attitude suggestive of continued hostility
6 toward women in the sense that, even in the interviews
7 with us, and I believe at MUSC as well, the way that he is
8 describing women is putting a lot of onus on them for
9 engaging in scenarios that created a rape, although he's
10 not going as far as acknowledging he committed a rape.

11 He is also blaming them for making up
12 allegations in retribution toward things that he had done or
13 not done that they wished he would have, like giving him
14 (SIC) more money or giving him (SIC) drugs. So he's still
15 attributing some of these attitudes and beliefs about women
16 and about sex.

17 Q Did he discuss future plans with you?

18 A Yes.

19 Q Will you tell us what he discussed with you?

20 A Yes. So he spoke at length about the idea -- he
21 plans to reside with his mother. He wants to live there,
22 he told us, for about two years upon his release. And
23 then he hopes to rejoin his church group, and then from
24 there launch into establishing sort of his own ministry.
25 He talked about being able to secure employment upon

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1 release. And has connected with his father about being
2 able to find a job, if he were unable to secure one by
3 himself.

4 One of the things that he talked a lot about
5 was his desire to do this on his own. There are resources
6 available to him, through even SCDC, but he wanted to pursue
7 his own. So even using his father as a backup for work was
8 something that he saw as an option if he couldn't do it on
9 his own.

10 But he wanted to not only have employment,
11 but then engage in volunteer work. He really wanted to work
12 with automobiles. And he specifically mentioned being able
13 to work, I believe, with BMW company. And he was aware that
14 he would have some supervision, and he was willing to comply
15 with whatever rules or regulations that they provide for
16 that.

17 Q Do you agree that in the past he's had a problem
18 with alcohol?

19 A Yes.

20 Q Was there any future plan for how he would deal
21 with the alcohol problems, if they arose?

22 A Independently, no. But oftentimes when we are
23 doing an interview, we look for sort of their spontaneous
24 ability to describe an awareness of strengths, weaknesses,
25 risk factors, and then of course how to address those.

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1 He was -- he spent a great deal of time
2 trying to focus on just the positive things. So with our
3 suggestions to kind of look at problematic behaviors that
4 he's had in the past and how he could continue to work on
5 those in the future, he was then willing to say that having
6 a sponsor through AA and/or NA would be very valuable, it
7 could help him to continue to manage his substance use.

8 And I think what was hard for him is coming
9 to terms with, just because he has changed or not engaged in
10 some of these negative behaviors over the past 18 years,
11 doesn't mean that once in the community, they may or may not
12 be relevant for him to manage in a different way.

13 And so through discussing that with him,
14 that's when he was able to say, yes, I need to be mindful of
15 substance abuse potentials going forward as well. And that
16 is when he was saying having a sponsor could be very
17 valuable as well.

18 Q Did he identify any coping skills he would use
19 to manage stress?

20 A He did. He specifically relied a lot on his
21 faith. The use of prayer, reading the scriptures,
22 attending church, using the counseling services available
23 through his church. Engaging in exercise, employment,
24 talking with his mother. He spoke at length about the
25 relationship he has with his mother and how she is his

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1 best friend and a very positive influence in his life, and
2 somebody who is helping to hold him accountable and keep
3 him on a positive path.

4 He talked about how he has been able to use
5 those exact coping skills since being incarcerated, which
6 has helped keep him consistently working, in positive
7 relationships with staff as well as other inmates, and
8 something that he desires to continue to do well in the
9 community. Because he feels like that, that future of
10 positive thinking is a good way to avoid reoffending or
11 relapsing into any sort of old lifestyle patterns.

12 Q In your opinion, do you think Mr. Williford is a
13 person that possesses a mental abnormality or personality
14 disorder that would make him likely to engage in acts of
15 sexual violence if he is not confined to involuntary
16 treatment?

17 A We did not opine that he has a predisposition or
18 something that makes him predisposed to engage in that
19 type of behavior. So, no.

20 Q Is it your opinion that his problems in the past
21 were a factor of his environment and his life decisions,
22 as opposed to a mental abnormality or personality
23 disorder?

24 A Yes, that is exactly our position.

25 Q And is the fact that he hasn't had any offenses

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1 since 2005 indicative of that?

2 A I'm sorry. Can you repeat?

3 Q The fact that he's not had any problems since
4 2005, when he was -- well, actually I think that it was
5 2004, when he slapped a person in prison, would that be
6 indicative of the fact to support your belief that he
7 doesn't have a mental abnormality or personality disorder,
8 and that it was bad decisions and environment that caused
9 the problems in the past?

10 A Well, that is definitely one piece of it. The
11 other piece is his attitudes about and how he's interacted
12 with staff, his consistent work history since he's been
13 incarcerated, and staff interviews with people who have
14 worked with him for the past several years, and their
15 insights into his demeanor, not only with them, but with
16 other inmates, on the clock, off the clock, et cetera.

17 So it is a combination of those things that
18 would suggest that it isn't a personality disorder, that it
19 is more explained by the environment and his lifestyle
20 choices that he was making prior to being incarcerated.

21 Q Did you and Dr. Gilliland arrive at this opinion
22 together?

23 A We did.

24 Q And what was the opinion reviewed by the staff
25 at DMH?

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1 A I'm sorry?

2 Q Was this opinion reviewed by other staff at DMH?

3 A Well, prior to concluding the report,
4 Dr. Gilliland and I presented the case to our colleagues.
5 And we gave our hypothesis, working diagnoses, categories
6 at that time, and it was supported by our colleagues. But
7 the report hadn't been completed at that point.

8 MR. THOMPSON: Thank you. You can answer any
9 questions that the State may have.

10 THE COURT: Cross-examination.

11 MS. SHAW: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MS. SHAW:

14 Q Dr. Tross, can you hear me from here? There is
15 two levels of glass between us, you know, and I'm
16 naturally very soft-spoken. Can you hear me all right?

17 A Yes, ma'am. And my ear is around the glass, so
18 I think we are good.

19 Q Okay. If you can't hear me, just let me know,
20 and I'll be happy to answer -- or ask any questions again.

21 Now, Dr. Tross, it is -- based on your
22 evaluation, which consisted of a couple of interviews,
23 record review, and scoring of the statics, you and Dr.
24 Gilliland concluded that Mr. Williford does not, in fact,
25 have any personality disorder or mental abnormality,

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1 right?

2 A Correct.

3 Q Okay. Now, I'm going to ask you about the
4 amount of information you had. And I recognize that
5 different evaluators might use different tools in
6 conducting their evaluations. Would you agree with that?

7 A At times, yes.

8 Q Okay. And not every evaluator is going to use
9 the same instruments, right?

10 A Correct.

11 Q Okay. So if you had had the benefit of -- and
12 we will start with the SASSI. Can you tell the Court what
13 that is?

14 A It's a self-report instrument as to whether or
15 not -- the degree to which they endorse certain types of
16 substance related behaviors or uses.

17 Q Okay. And you didn't use that?

18 A Correct.

19 Q Okay. But you were here to hear Dr. Gottfried's
20 testimony, right?

21 A Yes.

22 Q Okay. And you reviewed her report?

23 A I've seen it, yes.

24 Q Well, did you review it?

25 A I have seen it.

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1 Q So are you aware that on the Static C, Mr.
2 Williford reported that he was -- he reported several
3 pieces of information that indicates he has a high
4 probability of a substance abuse disorder. And even
5 though he reported that information, he still responded
6 defensively. You are aware of that?

7 A He did the same thing in the interviews with us.

8 Q Okay. So you did not do the PAI, correct?

9 A Correct.

10 Q Okay. Are you aware that PAI showed that he had
11 significant faking good type response styles?

12 A We saw what Dr. Gottfried wrote up, but the test
13 data we did not have, so I cannot speak to the degree of
14 significance. What I can say is that obviously it didn't
15 invalidate the test.

16 Q Okay. But it was still there, you are at least
17 acknowledging that there was significant faking there?
18 Yes or no?

19 A No. I think that there is a defensive quality
20 to Mr. Williford, which is seen in all of the interviews
21 that we had with him. So having that on a test that
22 measures the same thing is not surprising.

23 Q Well, I will go through a couple of the
24 specifics that were revealed in Dr. Gottfried's report.

25 Mr. Williford, in fact, indicated denying

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1 any significant problems with anti-social behavior. We
2 know that is not true, right?

3 A Again, the PAI is not asking -- it is a
4 personality measure. And it's asking a variety of
5 questions, and based on his response patterns, it's going
6 to rank certain clinical scales.

7 Q Okay. But basically he was saying he didn't
8 have any problems with criminal behavior?

9 A Well, that, I don't know. He acknowledged
10 problems with criminal behavior to us during the
11 interviews that we had with him on more than one occasion.
12 So, if that wasn't the question --

13 Q You are aware, or are you aware that he endorsed
14 having stable, effective social relationships?

15 A Again, with us he acknowledged not having those
16 things.

17 Q Well, he reported on the PAI, so he was lying
18 either then or to you.

19 So are you aware that he reported that he
20 has the ability to have close attachments, and that is how
21 he manages interpersonal relationships?

22 A In the interviews with us he acknowledged
23 feeling that currently he has close attachments to his
24 family. He acknowledged that he didn't previously have
25 them. But in terms if interpersonal romantic

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1 relationships, he has consistently acknowledged not having
2 that.

3 Q Okay. Well, he reported he did have them on the
4 PAI. And the results of the PAI indicated he said he
5 would get treatment. But, in fact, he said something very
6 different to you; isn't that true?

7 A In what regard?

8 Q Any sort of ongoing treatment for substance
9 abuse or sex offender treatment. In fact, he reported the
10 exact opposite to you, didn't he?

11 A No, that's not true. When we spoke with him
12 again --

13 Q He didn't say that he did not feel he needed sex
14 offender treatment?

15 A In regards to sex offender treatment, correct,
16 he didn't feel that he needed that.

17 Your question was treatment. He has
18 acknowledged that he had an interest in and/or a willingness
19 to get in treatment if it's asked of him by probation and
20 parole while on community supervision.

21 He has also acknowledged the need for
22 possible ongoing substance abuse, sponsors or consultation
23 with AA. He is not disregarding the need for some
24 treatment, but specifically with regards to sex offender
25 treatment, yes.

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1 Q And when you asked him about his future plans,
2 he didn't say that going to substance abuse treatment was
3 part of his future plans, did he?

4 A Not on his own, no.

5 Q And he didn't say that attending sex offender
6 treatment would be part of his future plans, did he?

7 A Correct.

8 Q Okay. And he has had multiple violations of
9 probation in the past, right?

10 A He's had two, and they predate his offense
11 arrest.

12 Q But he's still got them, so he's had trouble
13 complying with probation in the past, right?

14 A Correct.

15 Q Okay. And past behavior is the best indicator
16 of future behavior; isn't that true that you said that
17 when you were testifying for me?

18 A I'm sorry?

19 Q Isn't it true that you said, when you have been
20 testifying for me, that past behavior is one of the best
21 indicators of future behavior?

22 A Absolutely.

23 Q Okay. So he's got a history of saying, I don't
24 want to do this kind of treatment, I don't think I need
25 it. And he's got a history of probation violations. But

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1 you don't think he is at risk to reoffend (inaudible),
2 right?

3 A Well, one doesn't always equal the other. I
4 mean, if you are asking for my assessment of his risk, I
5 mean that is -- encompasses a variety things, not just the
6 presence of a particular fact or the lack of a presence of
7 a certain fact.

8 Q Okay. Now, you also did not do the Abel, right?

9 A That's correct.

10 Q Okay. And he acknowledged -- the only behaviors
11 he actually acknowledged on the Abel, when he did one for
12 Dr. Gottfried, was having one-night stands, and use of
13 prostitutes, and having sex with strangers; right?

14 A Right. Same thing he endorsed with us during
15 the interviews.

16 Q Okay. And on the Abel, he denied raping them;
17 isn't that true?

18 A I don't know.

19 Q That is one of the behaviors, isn't it?

20 A I don't know.

21 Q Do you know how to administer the Abel?

22 A I don't administer the Abel.

23 Q Okay. Now, when you were talking to him about
24 his sexual offending history, he in fact denied sexually
25 abusing a male child, which was actually his first

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1 juvenile conviction when he was 13 years old, right?

2 A Correct.

3 Q Okay. He denied raping all four of the women
4 who accused him of rape, correct?

5 A Correct.

6 Q Okay. And that is even though he was convicted
7 of two counts of criminal sexual conduct in the first
8 degree in reference to two different women at two
9 different times?

10 A Yes.

11 Q Okay. And that is also, even though he was
12 arrested and charged, in all of his offending behaviors
13 within about a two-year period, and two of which occurred
14 while he was out on bail; isn't that also true?

15 A I'm sorry. What's your question?

16 Q I'm asking you, did he disclose that he was out
17 on bail when he was accused of two of the four offenses?

18 A I'm not sure if we asked him that, because that
19 was already facts in the record, so we knew that.

20 Q Okay. Well, it would be important to know what
21 he would have to say about that, right?

22 A Well, he denied the offenses, so . . .

23 Q Exactly. He also denied fantasies about rape,
24 coercion, and basically any other paraphilic interest,
25 right, that's all his self-report?

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1 A Correct. But there is also, in our opinion, no
2 evidence to suggest that he has that. Because, again,
3 multiple sexual partners throughout his life, none of whom
4 have accused him of sexual fantasies involving rape or
5 coercion, or sadistic fantasies. We don't have a
6 pornography use or abuse or addiction. We don't have
7 hypersexuality. We don't have an admission or indication
8 that his sexual behaviors themselves are surrounded or
9 heightened as a result of fantasies or engaging in
10 coercive sexual behavior.

11 Q Okay. We will get to that hypersexuality
12 question. Wouldn't you disagree that having 100 sexual
13 partners before you were incarcerated for 18 years at
14 approximately the age of 25 is quite a lot?

15 A I would think that that is a relative question.

16 Q Well --

17 A Numbers themselves don't equate to
18 hypersexuality.

19 Q Okay. Well, would you disagree that having five
20 female romantic partners, including a wife that you were
21 cheating on at the time, that would be considerably higher
22 than average?

23 A Again, it's relative to the circumstances with
24 which somebody is living. If those around you, your
25 peers, your parents are living similar lifestyles, then

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1 maybe it's not unusual for that individual.

2 Q I'm not talking about an individual's social
3 contacts, I'm talking about society rules.

4 A Right. But the way that you raised the question
5 is asking me to just pass judgment, and that is not part
6 of risk assessment.

7 Q Well, then, how about I ask it this way: Would
8 you agree or disagree that in American society, having
9 five or more sexual partners at any given time, when you
10 are engaging in significant deceit and lies, is generally
11 considered social undesirable behavior?

12 A Again, I think it depends on the context that
13 somebody is living. Because if your parents, your
14 neighbors, your friends are engaging in the exact same
15 type of behavior, then for you that may not be abnormal,
16 it may not be deviance, and it may not even be frowned
17 upon.

18 Q So on the Abel, do you know anything about the
19 social desirability score?

20 A Just what I have read. I don't administer it.

21 Q Well, you're aware, and you heard Dr. Gottfried
22 testify about his Abel score, it's highly problematic, and
23 that he was giving socially desirable responses.

24 A Right.

25 Q Did you hear that?

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1 A Yes.

2 Q Okay. Now, what did -- is his dishonesty a
3 significant part of psychopathy?

4 A Meaning what?

5 Q Well, I mean, is dishonesty a factor that would
6 be considered in assigning the label of psychopathy to any
7 given individual?

8 A Not in and of itself.

9 Q Okay. Is it considered in assigning anti-social
10 personality disorder?

11 A It is looked at. But the mere presence of
12 deception isn't indicative of a personality disorder or
13 psychopathy. And, again, defensiveness isn't deception,
14 it's simply defensiveness.

15 Q Well, saying you didn't rape somebody when, in
16 fact, you did, that would be considered dishonest, right?

17 A Actually, it's denial. It's not necessarily the
18 same thing as deception. And denial serves a lot of
19 purposes. Protection against civil commitment. Being
20 seen as worse than you are. There is a lot of reasons
21 that somebody might engage in denial. It's not the same
22 thing as suggesting that they are a compulsive or
23 pathological liar, which is what is needed for psychopathy
24 and/or antisocial personality disorder.

25 Q Well, did you read the portion of

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1 Dr. Gottfried's report where she goes into the individual
2 facets that go into the two overarching factors to assign
3 someone a diagnosis of psychopathy?

4 A I have seen her report, and we disagree that
5 psychopathy was a relevant diagnostic consideration for
6 Mr. Williford. Mostly because, again, the only examples
7 highlighted in the report were the same examples used to
8 claim that he was being -- that he had antisocial
9 personality disorder. And deception about offenses isn't
10 the same thing as pathological or chronic, needless
11 deception, which is what the requirement is for
12 psychopathy.

13 Q How about scoring greater than 90.9 percent of
14 other offenders or other individuals in the effective
15 range on Harris. Is that significant to you in any way,
16 shape, or form?

17 A No.

18 Q Okay. How about being -- scoring greater than
19 77.5 percent of the people on the interpersonal factors;
20 is that significant to you?

21 A No.

22 Q And how about antisocial, 81.1 percent; is that
23 at all significant to you?

24 A No.

25 Q Okay. Now, isn't it concerning at all that

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1 there's so much documented dishonesty from Mr. Williford
2 in the context of these evaluations?

3 A No. We would disagree that there is documented
4 dishonesty. What's documented is a defensive
5 presentation, a desire to present himself in a favorable
6 light. It is not the same thing as chronic, pathological,
7 or needless deception. And the things that we constantly
8 see the deception about is whether or not he committed
9 these offenses.

10 Q So honestly, Mr. Williford has a motivation to
11 put himself in the best light, especially with significant
12 consequences to the outcomes of these decisions or
13 recommendations from you as a doctor, right?

14 A Oh, of course.

15 Q So it's not surprising to you that he lied to
16 both of you about a bunch of different things?

17 A It is not surprising to see deception. I'm not
18 going to agree that he lied to me throughout the
19 interview.

20 Q Okay. Well, in your own report on Page 9, you
21 acknowledge that he has a history of sequence behavior,
22 and he appears to have demonstrated a lack of remorse for
23 any of his offenses.

24 That is the third paragraph down, right
25 about the middle. Are you familiar with that passage?

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1 A I'm sorry. Where are you looking?

2 Q Third paragraph, Page 9 of your report. You
3 acknowledge that he has a history of sequence behaviors.
4 He's engaged in multiple -- impulsive and reckless
5 behavior, as indicated by repeated spur of the moment
6 decisions in his offending, documented use of substances
7 while driving on multiple occasions. And he appears to
8 have demonstrated a lack of remorse for many of his
9 offenses. Do you see that part?

10 A No. I don't see what you are referring to, but,
11 yes, I have no doubt that that's in here. Because, again,
12 his lifestyle prior to his incarceration absolutely
13 incapsulated that.

14 Q Okay. Yet you said on direct that he
15 demonstrated considerable remorse; where is that
16 documented in your report?

17 A Yeah. When we met with him, he talked a great
18 deal about lifestyle choices in general, a lot of remorse
19 about the death of his brother. A lot of remorse about
20 his sexual relationships, and having multiple partners,
21 especially when talking about future plans and how he saw
22 his life totally different.

23 He expressed a great deal of remorse about
24 just his lifestyle in general, and how the decisions he was
25 making led to a lot of problematic behaviors. And that

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1 these are things that he wants to distance himself from, and
2 has taken great steps while incarcerated to distance himself
3 from, and plans to continue doing that going forward.

4 Q He is not allowed to have conjugal visits at
5 SCDC, is he?

6 A I don't know.

7 Q Did you ask him?

8 A No.

9 Q And he said he felt bad for killing his brother.
10 Did he ever once say that he felt bad that he raped four
11 different women? No, right, because he didn't even
12 acknowledge doing it?

13 A I'm sorry. Could you ask that question again?

14 Q Yeah. I'm asking you, did he once acknowledge
15 feeling bad for what he did to his female victims when he
16 raped them?

17 A He denied actually committing rape. On two of
18 the offenses that he was willing to talk to us about,
19 although he is putting a great deal of onus on the
20 victims, he expressed remorse for the circumstances, the
21 situation, but wouldn't go as far as saying that he did
22 commit a sexual assault.

23 Q So he doesn't feel bad for what he did?

24 A I'm sorry?

25 Q So he doesn't feel bad for what he did?

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1 A Well, I would disagree. He is expressing some
2 remorse, but he's in denial about a lot of the
3 circumstances, and still putting blame on others.

4 Q Now in your report, at Page 10, you indicated
5 that there's some evidence that Mr. Williford actually had
6 sexual relations and non-consensual sexual activity,
7 right? The very first sentence on that page.

8 A I'm sorry, what?

9 Q Page 10 of your report.

10 A Yes.

11 Q And it says that there is some evidence that
12 Mr. Williford has sexual interests in non-consensual or
13 consensual sexual activity. Do you see that?

14 A You said that was the first sentence?

15 Q Yes, at the very top of the page.

16 A I think maybe we have different pages. Because
17 my first sentence on Page 10 says, He appears to have
18 demonstrated a lack of remorse for many of his offenses.

19 So I just want to make sure I know what you
20 are referring to.

21 Q Well the sentence says, Sexual arousal to
22 non-consensual -- it is a continuation of the sentence
23 from the page before.

24 Says, during the interview there is some
25 evidence Mr. Williford has sexual interest in

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1 non-consensual sexual activity. And I have a marked-up
2 copy, but I can show you --

3 THE COURT: Yeah, let the witness see if you have
4 a copy of what you're referring to. Let her see it so
5 she can review it.

6 BY MS. SHAW:

7 Q I will show you a copy that is not marked up on
8 that particular part.

9 That very first sentence right there.

10 A These are -- these are different.

11 Q I'm not sure why you would have a different
12 report.

13 A Well, mine says 10 of 15. Yours says 10 of 14,
14 so . . .

15 Q All right. This paragraph is this paragraph.
16 Okay.

17 A So I think that our -- whatever you printed is
18 just off of my report, but this, this is the one you are
19 referring to?

20 Q Correct. Yes.

21 A Okay. Yes.

22 Q And then there's a paragraph after that.

23 A Okay.

24 Q So now that we have established where we are.

25 So you indicated in your report that in

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1 fact he does have some para -- or some interest in
2 non-consensual sexual activity, right?

3 A No. What is written is that there's some
4 evidence initially that could suggest that there is
5 paraphilic interest. However, we conclude that these
6 factors in isolation of other evidence do not indicate
7 paraphilic interest in non-consensual sex. And we go on
8 to talk about how, because throughout the vast majority of
9 his life he engaged in consensual sex with adults and no
10 indication he was aroused by non-consensual themes.

11 And then specifically we go into some other
12 stuff. So what we're doing in this section is really --
13 because, again, the statutory criteria is whether or not
14 somebody has a mental abnormality or -- and/or a personality
15 disorder.

16 So we are sort of presenting our evidence as
17 to acknowledge that we considered these things, and here is
18 why we ultimately ruled them out.

19 Q And you did that, even though you acknowledged
20 in the very next paragraph, though he continued to rape
21 despite repeated sanction in a court of law that suggests
22 that the risk of getting caught or returning to prison did
23 not deter his efforts to satisfy his sexual desires.

24 A Correct. That is part of our analysis of how
25 that evidence could be seen as indicative of paraphilic

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1 interest. But, again, the next paragraph explains why we
2 -- because these factors, in isolation of other evidence,
3 do not indicate a paraphilic interest in non-consensual
4 sex. And we go on to describe why that is.

5 Q And so you established that Mr. Williford, the
6 time that he was offending before he went to prison on two
7 four-year sentences, he was running the streets, having
8 sex with as many women as he possibly could get, engaging
9 in all the same questionable behaviors, at best, illegal
10 behaviors, at worst. And yet despite having a
11 considerable number of willing and available sexual
12 partners, he continued to engage in a pattern of picking
13 these women up in his car, or a car he borrowed from his
14 wife, taking them to a secluded spot, and raping them
15 inside his vehicle. And you don't believe that that --
16 and that's actually documented over a two-year period.

17 The first one that he was documented as
18 having committed and convicted for in 2000, if you recall,
19 and the last one occurred in 2002. Part of the criteria
20 for paraphilia is an intense and persistent sexual
21 interest in abnormal behaviors, right?

22 A No, not necessarily abnormal behaviors. But it
23 is -- right, a consistent, persistent sexual interest in
24 behaviors with non-consenting or non-adult, or non-human
25 objects. And, again, that persistent and regular behavior

CROSS EXAMINATION OF DR. ROZANNA TROSS BY MR. RUNYAN

1 would be more than a two-year period.

2 This would be something, if it's a true
3 sexual interest, it's highly unlikely that a paraphilic
4 sexual interest of that nature is going to develop in the
5 mid 20s that didn't exist prior to. It is also --

6 Q But if he was convicted of criminal sexual
7 conduct in the first degree with a minor when was 13, so
8 in reality his sexual offending began in 1984.

9 A Right. But sexual offending is very different
10 than a sexual -- a paraphilic sexual interest. Sexual
11 offending is simply a criminal code classifying a
12 particular type of behavior.

13 Q Okay.

14 A So if you are asking if that indicates that
15 there is a pattern of a particular type of sexual arousal
16 or sexual interest, the answer is no.

17 Q Okay. If we look at the 1984 offense against a
18 13-year old male, that involved him forcing that child to
19 perform oral sex on him, right?

20 A Correct. That's what he reported. We don't
21 have any official records on that, so we don't know what
22 happened other than his self-report that he was accused by
23 two separate minor males, by him and a group of friends.

24 Q Of a forcible sexual act?

25 A Correct.

CROSS EXAMINATION OF DR. ROZANNA TROSS BY MR. RUNYAN

1 Q Okay. That is all I needed to ask you about
2 that.

3 Now, this pattern of four rapes of
4 individual females in his mid 20s characterized by picking
5 them up in his car, taking them to a secluded location,
6 raping them in his car. He can't do that in prison, can
7 he? He can't get a car?

8 A Correct.

9 Q He doesn't have access to barns and sheds and
10 things that would provide a secluded location for him to
11 commit a crime in prison, does he?

12 A Right. But one is not indicative of the absence
13 of something or the presence of something else. Because
14 somebody who has a paraphilic interest -- again, you are
15 looking at something that's equal to or greater than a
16 normal sexual interest that can be satisfied in a variety
17 of different ways.

18 So if somebody is truly driven by paraphilic
19 interest, they can find a way to create a scenario that
20 satisfies that behavior regardless of your circumstance.

21 So simply being in prison doesn't mean he is
22 prevented from having that paraphilic interest or wouldn't
23 be able to act out on it. He could find a way if it was
24 truly driving his sexual behavior.

25 Q Well while you are in prison, there is limited

CROSS EXAMINATION OF DR. ROZANNA TROSS BY MR. RUNYAN

1 or no access to females, right?

2 A That is not true.

3 Q Females with whom one should be having sex in a
4 prison environment?

5 A Well, correct. But that wasn't your question.

6 Q His access to --

7 A That wasn't your question. You said there is no
8 access to females. There are females in prison.

9 Now, is he's allowed to engage in some sort
10 of sexual behavior with them, no. The answer is no, he's
11 not.

12 Q And there are also armed guards in prison, so if
13 he engaged in some sort of offending behavior and gets
14 caught, there's a very significant or immediate likelihood
15 of -- I'll just say immediate consequence, right?

16 A There is definitely a likelihood of that.

17 Q Would that be a motivator for someone?

18 A It could be.

19 Q Okay. Now, you were talking about, on direct,
20 that you believe that it was the bad environment,
21 primarily, and the lifestyles that he was being exposed to
22 in the community that caused Mr. Williford's offending
23 behaviors, right? Did I hear you correctly?

24 A Correct.

25 Q Okay. Now, he says his plan is to go live with

CROSS EXAMINATION OF DR. ROZANNA TROSS BY MR. RUNYAN

1 his mom when he gets released, right?

2 A Yes.

3 Q Now, his mother had primary custody of him when
4 he was a child, his father wasn't the primary custodian,
5 was he?

6 A I don't know about the legal circumstances of
7 custody, but he reported and she confirmed that she was
8 his primary caregiver, and his father was in his life.

9 Q So there's nothing to indicate that
10 Mr. Williford's father was the person who was primarily
11 responsible for controlling him and teaching him right
12 from wrong on a day-to-day basis, is that right?

13 A No. He described being very involved with his
14 father and that he was in his life, and that his lack of
15 appropriate role model, as well as his grandfather, and
16 the attitudes that they taught him in person, as well as
17 coupled with his peer group contributed to his thought
18 processes and decision-making and things like that. It is
19 not one parent over the other.

20 Q And in prison, he's developed a ministry, he
21 says all these young men who have also been convicted of
22 various crimes, sort of look to him and look to him sort
23 of an uncle, right?

24 A Correct, that was in Dr. Gottfried's report,
25 yes.

CROSS EXAMINATION OF DR. ROZANNA TROSS BY MR. RUNYAN

1 Q Okay. And that would also be a negative peer
2 group, wouldn't it?

3 A Which part?

4 Q The people who he's associated with in prison,
5 developing this social circle?

6 A Well, makes them negative?

7 Q Negative because they are convicted of multiple
8 offenses.

9 A Okay. So, if he's incarcerated with other
10 people who have been incarcerated, I don't know if that
11 automatically makes them negative peers, because if his
12 behavior with them is positive and appropriate and
13 healthy, if you will, then he's choosing to engage with
14 people who, despite the reasons they got incarcerated, are
15 maybe choosing to behave appropriately.

16 And if they look up to him in his ministry
17 because he's, maybe he's physically older than them, or he's
18 established in the ministry, and according to the Chaplin he
19 had been there for years. In a positive role model method,
20 I don't know that that's the same thing as saying that he is
21 hanging out with negative peers like he did when he was
22 running the streets and engaging in substance abuse behavior
23 and other criminal behaviors.

24 Simply because they are in an incarcerated
25 setting doesn't put them in the category of negative peers.

CROSS EXAMINATION OF DR. ROZANNA TROSS BY MR. RUNYAN

1 Q Well, I'll ask you another follow-up question
2 about the whole ministry thing. Can a person be a
3 sexually violent predator and be active, involved in their
4 church and in the faith?

5 A Sure.

6 Q Okay. Now, you and Dr. Gilliland scored
7 Mr. Williford, I think, even higher on the Static than
8 Dr. Gottfried, right?

9 A It appears that way, yes.

10 Q Okay. And there's a margin for error, plus or
11 minus one, that's generally accepted, correct?

12 A Yes.

13 Q But there is no disagreement about the Static
14 that puts him at a well above average risk rate?

15 A That's correct.

16 Q Even at his age, would you agree?

17 A Correct.

18 Q Now, you said on direct that sometimes
19 certain -- with antisocial personality disorders,
20 sometimes certain behaviors can be curbed, meaning if
21 somebody is put into a highly structured environment they
22 can conform some of their previous behaviors, right? Or
23 at least not exhibit them.

24 A Well, yes, that is true.

25 Q Okay. Is a controlled environment generally

CROSS EXAMINATION OF DR. ROZANNA TROSS BY MR. RUNYAN

1 considered to be -- supposed to be free of alcohol and
2 drugs?

3 A Yes.

4 Q Okay. And is a controlled environment generally
5 an environment where people can party and go out and have
6 fun?

7 A Do you mean leave the institution?

8 Q No. I mean, like have parties. Can the inmates
9 have parties?

10 A I'm just trying to clarify. A controlled
11 environment can mean a variety of things. I'm assuming
12 you mean his SCDC environment; is that correct?

13 Q That is where he's been since 2003. So I am
14 asking you, in the context of his SCDC environment, are
15 inmates allowed to socialize and allowed to have parties?

16 A They can socialize.

17 Q Are they allowed to have a party, where there
18 might be alcohol or drugs?

19 A No.

20 Q Okay. Would you disagree that considerable
21 amounts of both sexual and non-sexual offending behavior
22 in the community occurred when Mr. Williford had been
23 socializing with others?

24 A Socializing with a negative peer group, using
25 substances, engaging in buying and selling drugs, engaging

CROSS EXAMINATION OF DR. ROZANNA TROSS BY MR. RUNYAN

1 in other criminal behavior, yes.

2 Q Yet he plans to go back and live with his mom in
3 an environment that you are not familiar with?

4 A Actually his mother has moved. And both him and
5 his mother have described moving away from the
6 neighborhood and the drug area in which he grew up and
7 associated with negative peers. And they have both
8 described that the environment that she lives in now is
9 free, relatively free from those types of influences. And
10 both have described how that is actually going to be a
11 positive place for him to come and live because he won't
12 have those associations.

13 Q Do you know how far that is from where he grew
14 up?

15 A I don't.

16 Q Did you ask to find out?

17 A I asked, but that geography, I'm not familiar
18 with so . . .

19 Q Okay. So -- so you want to see, if you are -- I
20 mean, you previously said that, prior to his
21 incarceration, you would have diagnosed him with
22 antisocial personality disorder, correct?

23 A No. What we said is we -- had we evaluated him
24 and that is all the information that we had, I think that
25 it's highly possible. But, again, a personality disorder

CROSS EXAMINATION OF DR. ROZANNA TROSS BY MR. RUNYAN

1 is looking at impairments in two -- at least two of four
2 areas. That is not explained by other context.

3 And so what we have now is somebody who has a
4 marked deviation from the -- we have a total change in
5 context, and we don't see that being an impairment.

6 Well, so if all we have, and I believe that's
7 a hypothetical question asked of me, but if that is all we
8 had at time that, that we couldn't -- that there wasn't a
9 different context in which to explain. Now, it is highly
10 unlikely that that would have been our conclusion.

11 Q Okay. Well, at this point in time you still see
12 him lying to protect himself, right? That would be one of
13 the things to consider in an antisocial diagnosis?

14 A No. The descriptions for antisocial personality
15 disorder and the use of deception to include looking at --
16 I know you are going to show me just the word deception,
17 but understanding pathology is more than just a list of
18 symptoms in a book.

19 Q I understand that, but --

20 A This actually is meaningless. It's across
21 multiple settings, it's frequent and pervasive, and it
22 encompasses more than just denying a crime or trying to
23 preserve -- you know, getting in trouble for admitting
24 that you raped somebody.

25 So if that is the only area that we're seeing

CROSS EXAMINATION OF DR. ROZANNA TROSS BY MR. RUNYAN

1 deception, that's not the same thing as frequent, pervasive,
2 or across multiple settings. That would suggest that it is
3 a personality profile, or that it's pathological.

4 Q Okay. Well, you didn't perform all of those
5 additional tests and scoring measures like the SVR20, the
6 Abel, the SASSI, the Harris; you didn't perform all
7 of those personality testing measures, did you?

8 A Well, those aren't personality measures. The
9 PAI and the psychopathy or the Harris Checklist are. But,
10 again, our interviews didn't yield any different
11 information. His defensiveness was present with us on
12 both times that we met with him. A desire for social
13 desirability or to present himself in a favorable way was
14 present. As well as a focus on how he has changed and the
15 positivity. That is definitely something that he is proud
16 of, and that it something that he is definitely
17 emphasizing. Doing that isn't indicative of pathological
18 deception.

19 Q Did he demonstrate any irritability with you?

20 A Actually, he didn't.

21 Q He did with Dr. Gottfried. Did you hear that
22 testimony? He displayed arrogant and irritable behavior.

23 A What I heard her testify to was her
24 interpretation of being defensive or not wanting to admit
25 the rape, and then wanting to engage in the ministry as

CROSS EXAMINATION OF DR. ROZANNA TROSS BY MR. RUNYAN

1 somehow indicative of arrogance or haughty behaviors. I
2 would disagree.

3 Just because he has a goal that sounds like
4 he shouldn't have that goal doesn't make it an unrealistic
5 or an inappropriate goal. And it definitely is not
6 indicative of arrogance.

7 Q Well, he has indicated -- in terms of
8 unrealistic hopes and expectations, he says he wants to
9 work for BMW. Given his criminal history, is it your
10 opinion that that's actually likely?

11 A Yes. Actually, it is. There is a lot of
12 companies that hire ex-cons. And if he's working in a
13 factory on car parts and he's got the skills to do that,
14 then why wouldn't that be a realistic opportunity for him?

15 Q Would you define consistent irresponsibility as
16 a stated fact in the universe, about Mr. Williford, that
17 he has fathered eight children on six different women?

18 A Again, I think that's a very judgmental comment
19 that you are making about whether or not that's indicative
20 of consistent irresponsibility. Consistent
21 irresponsibility isn't about one facet of somebody's life.

22 Q What about failure to pay child support and
23 being in arrears for \$10,000, would that be consistent
24 with irresponsibility?

25 A It could be.

CROSS EXAMINATION OF DR. ROZANNA TROSS BY MR. RUNYAN

1 Q Okay. Now, would you disagree that there is
2 conduct disorder that is evident in Mr. Williford since he
3 was approximately 13 years old, and he has been sanctioned
4 and adjudicated delinquent on multiple occasions?

5 A Correct.

6 Q And notwithstanding your disagreement about
7 whether the seven factors to be considered are actually
8 present in Mr. Williford or not, you would agree that he's
9 over 18 years of age, right?

10 A Correct.

11 Q Okay. And that he could qualify for this
12 diagnosis, regardless of your disagreement with factors
13 one through seven?

14 A If you were just doing a checklist, then I
15 imagine there is a lot of things he could qualify for.

16 MS. SHAW: Thank you.

17 THE COURT: Any redirect?

18 MR. THOMPSON: No, sir.

19 THE COURT: All right. Thank you, Doctor. You
20 can step down.

21 MS. SHAW: Your Honor, at this time, does the
22 Court want closing or . . .

23 THE COURT: Well, first of all, is there anything
24 else, anything else from the Respondent?

25 MR. THOMPSON: At this point, the Respondent would

POST-TRIAL MOTIONS

1 rest. And we renew our Motion for Directed Verdict.

2 THE COURT: Motion is renewed. And, again, I find
3 this is a question of fact, and I would deny your
4 motion.

5 If each side, I believe I understand the issues
6 that have been framed, but if each side would like to
7 give me a brief summation, I'd be happy to hear from
8 you. I'll leave it up to you.

9 Any objection to the witness being excused?

10 MR. THOMPSON: No, sir.

11 MS. SHAW: Let me consult with my cocounsel.

12 MR. RUNYAN: No objection.

13 THE COURT: All right, Doctor, you are excused.
14 Thank you.

15 MR. RUNYAN: And we would, you know, ask that Dr.
16 Gottfried be excused as well.

17 THE COURT: Any objection?

18 MR. THOMPSON: No objection, Your Honor.

19 THE COURT: And Dr. Gottfried, you are excused.
20 Thank you.

21 THE WITNESS: Thank you.

22 MS. SHAW: Your Honor, I think that a very brief
23 closing, perhaps no more than a couple of minutes each.

24 THE COURT: Okay. Go ahead. And then I'll let
25 Mr. Thompson give any response that he'd like to.

CLOSING ARGUMENTS

1 MS. SHAW: Thank you, Your Honor.

2 Your Honor, this case is about the care and
3 treatment of Mr. Williford. The State must prove two
4 elements beyond a reasonable doubt.

5 Number one, that he in fact does have a qualifying
6 conviction under Subsection 44-48-30, and that he has a
7 mental abnormality and/or personality disorder which
8 makes him likely to reoffend.

9 Through the evidence introduced by my colleague, I
10 believe it is P1 through P3, clearly he does have the
11 underlying qualified convictions, so the first element
12 is met.

13 The element that Your Honor has been hearing
14 testimony about today is the question of whether he
15 suffers from a mental abnormality and personality
16 disorder which makes it likely to expect he will
17 reoffend.

18 You heard the testimony of two experts, Dr.
19 Gottfried and Dr. Tross, concerning whether he in fact
20 does have a mental abnormality.

21 But before we go into their disagreements, I would
22 like to go into their consistent statements and their
23 consistencies.

24 Number one is that he does have a long history of
25 sexually offending, beginning at age 13 and continuing

CLOSING ARGUMENTS

1 up to his most recent incarceration which was for
2 criminal sexual conduct in the first degree and
3 kidnapping.

4 Secondly, the Static scores, these are among the
5 gold standards. They are used in almost every single
6 sex offender evaluation. Doctors Gilliland and Tross
7 scored him a seven -- I am sorry, an eight. And
8 Dr. Gottfried scored him lower, she scored him a seven.

9 So, we have those. They are both uniformly
10 accepted and have been documented to have an
11 approximate 30 to 35 percent recidivism rate among
12 similar tiered offenders. That is consistent. It is
13 the well above average range which says, Based on those
14 factors alone, that there is a significant likelihood
15 of re-offense in the next five years.

16 You had Dr. Gottfried's testimony, which she did a
17 far more thorough interview with Mr. Williford. She
18 conducted the Abel. She conducted the SASSI, she
19 conducted the PAI, she conducted the Harris Psychopathy
20 Checklist. She conducted the scoring measures of the
21 SVR-20. And all of those factors combined gave her the
22 information which said, you know, this guy, he may have
23 had good behavior in prison, he may have managed not to
24 incur disciplinary infractions. He may have started a
25 ministry in prison, or participated in one. But that

CLOSING ARGUMENTS

1 in and of itself is not dispositive of the question of
2 whether he has a personality disorder.

3 He has demonstrated considerable antisocial
4 behaviors over time and in various contexts, including
5 raping four women and being accused of and convicted of
6 raping two.

7 All of those offenses occur in an extremely
8 similar pattern. Even Dr. Tross acknowledged that
9 there is some evidence of an interest in sexual arousal
10 to coercion.

11 You add to that the information from the PPG,
12 which there's considerable arguments about that. The
13 PPG indicated that, out of multiple scenarios across
14 two different stimuli sets, Mr. Williford consistently
15 displayed sexual arousal to coercive scenarios
16 involving not only adult women, but children.

17 So this in and of itself is another thing just to
18 add fuel to the fire. There is a serious issue with
19 Mr. Williford. He does, in my opinion, and in the
20 opinion of Dr. Gottfried, suffer from antisocial
21 personality disorder.

22 Dr. Tross, the only reason she didn't diagnose him
23 with that is because he's displayed some good behavior
24 in prison. The good behavior in a controlled
25 environment does not predict what has happened --

CLOSING ARGUMENTS

1 future behavior, given what has happened in the past.

2 When Mr. Williford has been out in the community
3 he has engaged in multiple offenses, both violent and
4 non-violent. He has led a generally criminal
5 lifestyle. And there's nothing out there that's going
6 to indicate to anyone that he is not likely to
7 recidivate.

8 And even Dr. Tross acknowledged on
9 cross-examination that a person can be a person of
10 faith. They can engage in ministry. That doesn't make
11 them non-threatening.

12 So in addition to the antisocial, you have a clear
13 pattern of behavior among the victims. He would pick
14 them up on the side of the road and take them to a
15 secluded environment and rape them at knife point, and
16 then dump them off somewhere.

17 One of them he actually stabbed, and he was
18 indicted for assault and battery with intent to kill
19 because he raped her with a knife. I mean, this is the
20 pattern that has been demonstrated in multiple time
21 frames and in multiple situations. That is not going
22 to change, especially given his level of persistent and
23 consistent arousal to coercive sex at this time, at the
24 time of the PPG, which was in 2020.

25 So you add the coercive sexual preference and you

CLOSING ARGUMENTS

1 add the antisocial personality disorder, and then you
2 add the final diagnosis of narcissistic personality
3 disorder, and you have an individual with multiple
4 mental abnormalities, which Dr. Gottfried believes make
5 him likely to reoffend.

6 So on that basis, we are requesting that Your
7 Honor find that the evidence submitted by the State has
8 proven beyond a reasonable doubt that Mr. Williford is
9 indeed a sexually violent predator, and we are
10 requesting that Your Honor commit him to the treatment
11 facility at Broad River. Thank you.

12 THE COURT: Thank you.

13 Mr. Thompson, response?

14 MR. THOMPSON: Thank you, Judge.

15 We are not here, and you are aware, to punish Mr.
16 Williford for what he's done in the past. We are here
17 to decide whether or not, you as the finder of fact,
18 believe beyond a reasonable doubt -- in other words,
19 are firmly convinced that he suffers from a mental
20 abnormality or personality disorder that would cause
21 him to reoffend if he were to be released without
22 treatment.

23 The doctors didn't agree on a lot of things. Some
24 things they did. Dr. Gottfried gave a lot of tests. A
25 lot of those tests, if you remember her testimony, came

CLOSING ARGUMENTS

1 back in his favor. Some, she says, did not.

2 Some of the ones that came back in his favor, she
3 tried to pass off as results being -- that he was being
4 deceptive. You heard the testimony, you can do with
5 that as what you may.

6 The big thing, Judge, in this case, is whether or
7 not there is a mental abnormality or personality
8 disorder, to start with.

9 As to the narcissistic personality disorder that
10 Dr. Gottfried testified to, she said there had to be
11 five factors. She only identified four on the stand.

12 She tried to make one of them two factors, but
13 they fell within each other. So her diagnosis of
14 narcissistic personality disorder, it didn't support --
15 she couldn't support it herself.

16 On the antisocial personality disorder, yes,
17 Dr. Tross said had I evaluated him in 2005, I might
18 have found that. But antisocial is a chronic
19 personality disorder that is ongoing. It is ongoing.
20 It's pervasive across several different systems or
21 factors or status, life, whatever.

22 Dr. Gottfried herself said that it decreases with
23 age, that it decreases especially in the fourth decade
24 of life. Well, he is in his fifth decade. Dr. Tross'
25 testimony dealt with that.

CLOSING ARGUMENTS

1 Mr. Williford, prior to 2005, I think this is
2 summing up her testimony, and I may be speaking out of
3 school, but I think her testimony prior to 2005 was the
4 environment he was in, the people he dealt with, the
5 decisions he made -- yes, he was just an SOB that you
6 didn't want to live next to. But he got into prison,
7 he got away from that environment. He has changed.

8 If he had antisocial personality disorder, it
9 would have shown itself somewhere over the last, what,
10 16 years, since the incident of slapping the one person
11 in prison. But there has been no evidence of it over
12 that period of time.

13 Therefore, it's either never existed or he's
14 gotten control of it. Because it is -- if he does have
15 it, it's chronic. So if it did exist, he's now able to
16 control it, and has been able to control it for 16
17 years.

18 As to the paraphilia, Dr. Tross testified that
19 they didn't find any. Dr. Gottfried testified that she
20 believed it existed. Even though I don't agree with
21 the PPG, and still believe that it should not have been
22 admitted, Dr. Gottfried did testify that there was no
23 way of tailoring a PPG to fit a certain person.

24 And there was a lot of talk about -- in her
25 testimony on the PPG, that it dealt with child

CLOSING ARGUMENTS

1 molesters. There's no evidence whatsoever that's been
2 presented that he is a child molester. But her PPG
3 test found that he was, found that he was -- oh, I
4 can't think of the word I'm trying to use -- found that
5 he was -- the inference, that he had an arousal to
6 inference. But there has been no testimony that there
7 was ever a problem with that. But she did testify she
8 couldn't tailor her test.

9 Judge, the PPG is a -- I realize that it's been
10 acknowledged as useful throughout this country, in
11 certain courts, in certain states. A lot of testimony
12 about Canada and England. There's a lot, and I think
13 it came out, there's a lot in the literature that it is
14 used in treatment. And I don't think using it as a
15 forensic tool to evaluate somebody and make a decision
16 on whether or not they are likely to offend is proper.

17 I would ask you to look at -- and I know that you
18 are, I have watched you all day sitting up there taking
19 notes. Look at the testimony from both sides. And I
20 realize that it is confusing as the dickens. I mean, I
21 do this and it is confusing to me at times. But I
22 don't believe the State has firmly convinced, proven
23 beyond a reasonable doubt, that Mr. Williford has a
24 mental abnormality or a personality disorder that is
25 likely to cause him to recidivate when he gets out.

CLOSING REMARKED BY THE COURT

1 And I would ask you to release him.

2 THE COURT: Thank you, Mr. Thompson.

3 Well, I want to -- I will deem the matter
4 submitted. And I want to take some time and review the
5 exhibits and the testimony in the record, so I am going
6 to take this under advisement. And I will have my law
7 clerk contact you when I have reached a decision.

8 But I thank counsel for both sides, and for the
9 very professional manner in which each side has
10 conducted the case.

11 This case is obviously a very, very important case
12 for both the State and for Mr. Williford, and I'm going
13 to take the time necessary to go through this
14 thoroughly.

15 I thank you-all, and we will close the record.

16 (Hearing concluded.)

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CERTIFICATE PAGE

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF OCONEE:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.

8

DATED this 6th day of October, 2021.

9

10

11

Mona L. Manley /s/

12

MONA L. MANLEY

13

Official South Carolina Court Reporter

14

Circuit Reporter for the 10th Circuit

15

(850) 893-6662

16

mmanley@sccourts.org

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30 years

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
STATE v JAMES LEWIS WILLIFORD
AKA:

Race/Sex: B M Age: 31

DOB: [REDACTED] SSN: [REDACTED]

DL# [REDACTED] SID: [REDACTED]

) IN THE COURT OF GENERAL SESSIONS
) INDICTMENT/CASE #

) 2003-GS-04-418

) A/W#: H109011

) Date of Offense: 12/31/02

) S.C Code: 16-03-0652 CDR Code #: 0160

) CASE RESTORED ☐

) SENTENCE: ☒ PLEA ☐ TRIAL

Bob

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO:

CSL - First Degree

in violation of 16-3-652 of the S.C. Code of Laws, bearing CDR Code #: 011401

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

Charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury.

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

WTH
Wendy Hallford
Solicitor

James L. Williford
Defendant

Michael Allen
Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections,
☐ County Detention Center, for a determinate term of 30 days/month/years or
☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of \$ _____
provided that upon the service of _____ days/months/years and/or payment of \$ _____
plus costs and assessments as applicable*, the balance is suspended with probation
for _____ months/years and subject of South Carolina Department of Probation.
Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.

☒ CONCURRENT or ☐ CONSECUTIVE to sentences on: 1831, 1832, 417, 419, 420

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____

PTUP _____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab, or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be paid in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund.
Other: _____

Recipient: _____

*Fine..... \$
14-1-206 - Assessments (107.5%) \$
14-1-211 (A)(1) Surcharge \$ 100.
14-1-211 (A)(2) Surcharge \$
56-5-2995 (DUI) \$
3% County(if Paid in Installments) \$
Public Defender Fund..... \$
TOTAL \$

A TRUE COPY

OCT 12 2020

Cathy M. Phillips
Clerk of Court/Deputy Clerk

Court Reporter Donna Brady

Code #: [REDACTED]
CLERK OF COURT

Sentence Date 7/6/03

Code #: 91117



SCCA/217 (1/01)

21 JUN 15 PM2:02:18
Anderson, SC CDC, CP/GS

App'x242

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT
FIRST DEGREE
16-03-0652[0160]

At a Court of General Sessions, convened on FEBRUARY 6, 2003,
the Grand Jurors of ANDERSON County present upon their oath:

CRIMINAL SEXUAL CONDUCT – FIRST DEGREE

That James Lewis Williford, Jr. did in Anderson County on or about December 31, 2002, engage in sexual battery, it wit: sexual intercourse with [REDACTED] without her consent.

The defendant used aggravated force to accomplish the sexual battery and/or the victim submitted to the sexual battery by the defendant under circumstances where she was also the victim of forcible confinement and/or kidnapping.

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

SOLICITOR

WITNESSES

ACSD/J. MILES

ARREST WARRANT NO. H-109011

ACTION OF GRAND JURY

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 2003-GS-04-418

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS
FEBRUARY 6 2003
TERM

WHD THE STATE

vs.

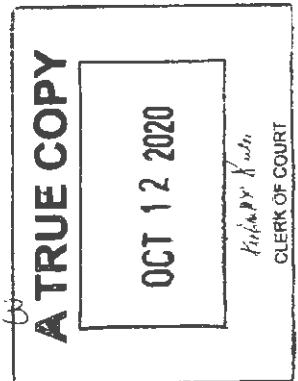
JAMES LEWIS WILLIFORD, JR.

Indictment for

CRIMINAL SEXUAL CONDUCT – FIRST DEGREE

16-03-0652 [0160]

DRUANNE WHITE, SOLICITOR



242

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

STATE v JAMES LEWIS WILLIFORD

AKA: _____

Race/Sex: B M Age: 31

DOB: [REDACTED] SSN: [REDACTED]

DL# [REDACTED] SID: [REDACTED]

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE #

2003-GS-04-420

A/W#: H109013

Date of Offense: 12/31/02

S.C. Code: 16-03-0652 CDR Code #: 0160

CASE RESTORED ☐SENTENCE: ☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO:

CSC - First Degree

in violation of 16-3-652 of the S.C. Code of Laws, bearing CDR Code #: 0160

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45Charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury.Plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.Wendy Hallford
SolicitorJames L. Williford
DefendantDehl O. Mall
Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections,
☐ County Detention Center, for a determinate term of 120 days/month/years or
☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of \$ _____
 provided that upon the service of _____ days/months/years and/or payment of \$ _____
 plus costs and assessments as applicable*, the balance is suspended with probation
 for _____ months/years and subject to South Carolina Department of Probation.
 Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentences on: 16-31, 16-32, 11-17, 11-18, 11-19

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine..... \$
 14-1-206 - Assessments (107.5%) \$
 14-1-211 (A)(1) Surcharge \$ 100.
 14-1-211 (A)(2) Surcharge \$
 56-5-2995 (DUI) \$
 3% County(if Paid in Installments) \$
 Public Defender Fund..... \$
 TOTAL \$

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab, or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be paid in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Cathy M. Phillips

Clerk of Court/Deputy Clerk

Court Reporter _____ Code #: _____

21 JUN 15 PM 2:02:27
Anderson, SC COC, CP/GS

A TRUE COPY

OCT 12 2020

Sentence Date 2/6/03

CLERK OF COURT

Code #: 211171

SCCA/217 (1/01)

App'x245



FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

INDICTMENT FOR
 CRIMINAL SEXUAL CONDUCT
 FIRST DEGREE

16-03-0652[0160]

At a Court of General Sessions, convened on FEBRUARY 6, 2003,
 the Grand Jurors of ANDERSON County present upon their oath:

CRIMINAL SEXUAL CONDUCT – FIRST DEGREE

That James Lewis Williford, Jr. did in Anderson County on or about December 31, 2002, engage in sexual battery, it wit: sexual intercourse with [REDACTED] without her consent.

The defendant used aggravated force to accomplish the sexual battery and/or the victim submitted to the sexual battery by the defendant under circumstances where she was also the victim of forcible confinement and/or kidnapping.

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

 SOLICITOR

DOCKET NO. 2003 - GS - 04 - 420

The State of South Carolina,

County of ANDERSON

WITNESSES

ACSD/J. MILES

COURT OF GENERAL SESSIONS
FEBRUARY 6 **TERM** **2003**

WHD **THE STATE**

vs.

JAMES LEWIS WILLIFORD, JR.

ARREST WARRANT NO. H-109013

ACTION OF GRAND JURY

Foreman of Grand Jury

VERDICT

Indictment for

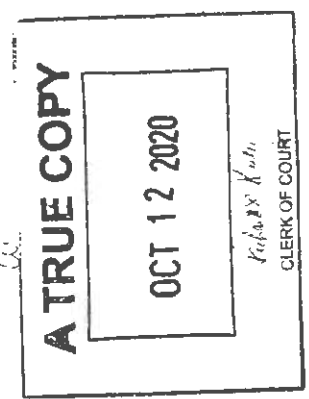
CRIMINAL SEXUAL CONDUCT – FIRST DEGREE

16-03-0652 [0160]

DRUANNE WHITE, SOLICITOR

Foreman of Petit Jury

Date:



App'x247.

30 yrs

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE #

STATE v JAMES LEWIS WILLIFORD

AKA:

Race/Sex: B M Age: 31

DOB: SSN:

DL# SID:

2001 -GS-04- 1831
A/W#: F692867
Date of Offense: 07/01/00
S.C Code: 16-03-0652 CDR Code #: 0160
CASE RESTORED
SENTENCE: ☒ PLEA ☐ TRIAL

Bob

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO:

CSC First Degree

in violation of 16-3-652 of the S.C. Code of Laws, bearing CDR Code #: 011401

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
Plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

Wendy Hallford
Solicitor

James L. Williford
Defendant

Robert D. Double
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections,
☐ County Detention Center, for a determinate term of 20 days/months/years or
☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of \$ _____
provided that upon the service of _____ days/months/years and/or payment of \$ _____
plus costs and assessments as applicable*, the balance is suspended with probation
for _____ months/years and subject of South Carolina Department of Probation.
Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.

☒ CONCURRENT or ☐ CONSECUTIVE to sentences on: 1832, 417, 418, 419 & 420

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab, or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be paid in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund.
Other: _____

Recipient: _____

*Fine..... \$
14-1-206 - Assessments (107.5%) \$
14-1-211 (A)(1) Surcharge \$100.
14-1-211 (A)(2) Surcharge \$
56-5-2995 (DUI) \$
3% County(if Paid in Installments) \$
Public Defender Fund..... \$
TOTAL \$

PLAINTIFF'S
EXHIBIT
3
6-14-21

Cathy M. Phillips
Clerk of Court/Deputy Clerk

A TRUE COPY
JUDGE
OCT 12 2020
Sentence Date
Kirkland K. Kuter
CLERK OF COURT

Court Reporter Donna Brady Code #: 1111

'21 JUN 15 PM2:02:34
Anderson, SC COC, CP/GS

Code #: 1111171

SCCA/217 (1/01)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

INDICTMENT FOR CRIMINAL
SEXUAL CONDUCT FIRST DEGREE
16-03-0652 [0160]

At a Court of General Sessions, convened on JUNE 12, 2001,
the Grand Jurors of ANDERSON County present upon their oath:

COUNT ONE — CRIMINAL SEXUAL CONDUCT

FIRST DEGREE

That JAMES LEWIS WILLIFORD, JR. did in
ANDERSON County on or about JULY 1, 2000, engage
in sexual battery, to wit: SEXUAL INTERCOURSE

upon and with the body of [REDACTED] without
his/her consent. Such sexual battery was accomplished by the use of force of a high and aggravated
nature, to wit: THAT THE DEFENDANT USED AGGRAVATED FORCE TO ACCOMPLISH
THE SEXUAL BATTERY AND/OR THE VICTIM SUBMITTED TO THE SEXUAL BATTERY
BY THE DEFENDANT UNDER CIRCUMSTANCES WHERE SHE WAS ALSO THE VICTIM OF
FORCIBLE CONFINEMENT AND/OR KIDNAPPING.

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

[Signature]
SOLICITOR

WITNESSES
ACSD R. WILLAIMS

DOCKET NO.

001-GS-04 1831

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

JUNE 12 2001
TERM

WHD

THE STATE

vs.

JAMES LEWIS WILLIFORD, JR.

ARREST WARRANT NO. F-692867

ACTION OF GRAND JURY

TRUE BILL
DATE 6/12/01

Foreman of Grand Jury

VERDICT

App'x250

Foreman of Petit Jury

Date:

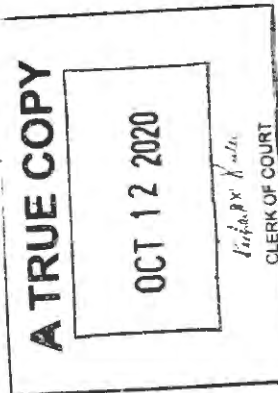
**Indictment for Criminal
Sexual Conduct First Degree**

16-03-0652 [0160]

DRUANNE WHITE, SOLICITOR

Commitment

2-6-03



STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
 In the Matter of the Care and	)	NOTICE OF MOTION AND MOTION
Treatment of James Williford	)	TO SUPPRESS TESTIMONY RELATED
Respondent.	)	TO PPG TESTING AND RESULTS
_____	)	2019-CP-04-1308

TO: Christopher S. Runyan, Assistant Attorney General

YOU WILL PLEASE TAKE NOTICE that the petitioner, through his undersigned attorney, will move before this Honorable Court at 9:00 a.m. on June 14, 2021, or as soon thereafter as the same shall be heard, but before the start of petitioner's trial on that date, for an Order of the Court suppressing and excluding any and all testimony or reference to the fact that part of the petitioner's evaluation involved a penile plethysmograph (PPG) examination.

Petitioner is informed and believes that any and all testimony as to the PPG examination and any results or conclusions derived therefrom should be excluded for the following reasons:

I.

The PPG examination does not meet the requirements of admissibility of scientific evidence pursuant to Rule 702, SCRE, because it does not meet the factors set forth in and pursuant to 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).

In State v. Council, 335 S.C. 1, (1999), the South Carolina Supreme Court directed that "the proper analysis for determining admissibility of scientific evidence is now under the SCRE.

When admitting scientific evidence under Rule 702, SCRE, the trial judge must find the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable. The trial judge should apply the Jones factors to determine reliability.” In the opinion the Court states “(i)n considering the admissibility of scientific evidence under the Jones standard, 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.”

First, Respondent is informed and believes that there is a lack of standardization relating to the test. There is a lack of standardization of stimulus sets and interpretation of results between testing sites,^{1 2} Depending on the testing site, “stimuli used to elicit arousal can include videos, still images, and audio materials. It can depict a variety (of) consenting and non-consenting sexual scenarios as well as neutral, non-sexual scenarios. Models in visual stimuli can be clothed, semi-clothed, or nude. Variation in stimuli modality and the type of sexual interest being tested can have a large impact on PPG outcomes.”³

“This brings to light the great concern in both the courts and the academic community regarding not only the scientific validity of penile plethysmography testing, but also the complete lack of standardization in its administration.”⁴

¹ “Standardization of Penile Plethysmography Testing in Assessment of Problematic Sexual Interests”. L. Murphy, R. Ranger, P. Federoff, H. Stewart, R. Dwyer & W. Burke. Epub 2015 Sep 9.

² “Assessment of problematic sexual interests with the penile plethysmograph : an overview of assessment laboratories”. L. Murphy, R. Ranger, H. Stewart, G. Dwyer & P. Federoff. Curr Psychiatry Rep 2015 May.

³ “Stimuli used in the measurement of problematic sexual interests”. L. Murphy, S. Curry, K. Klapilova, R. Dwyer, T. Zikanova, J. Federoff. Int. Review Psychiatry 2019 Mar.

⁴ “The Hard Truth About the Penile Plethysmograph: Gender Disparity and the Untenable Standard in the Fourth Circuit”. William & Mary Journal of Race, Gender and Social Justice March 2018.

“The test is controversial and has been criticized for a lack of standardization and for being subject to manipulation. *See United States v. Rhodes*, 552 F.3d 624, 626-27 (7th Cir. 2009); *United States v. Weber*, 451 F.3d 552, 565 (9th Cir. 2006).” In re Bilton, 432 S.C. 157 (S.C. Ct. App. 2020). “Courts have noted that PPGs are routinely used as a tool in treatment programs. *Weber*, 451 F.3d at 562-63 (citing *Berthiaume v. Caron*, 142 F.3d 12, 16 (1st Cir. 1998)). Even so, with limited exceptions, we will discuss later, 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.” *Doe ex rel. Rudy-Glanzer v. Glanzer*, 232 F.3d 1258, 1266 (9th Cir. 2000).” Bilton, 432 S.C. at 162-63.

Second, Respondent is informed and believes that the PPG test used in this case (developed by Dr. William Burke of Summerville) lacks adequate publication and peer review.

Third, Respondent is informed and believes that the PPG does not meet the third factor of the Council/Jones standard as there are no quality control procedures in place to ensure reliability. Studies have shown that the accuracy of the PPG can be influenced by many factors which can lead to false positives and false negatives. Respondent is further informed and believes that no method exists to determine if the results are accurate or a false positive or false negative. Each subject is unique from every other subject and Respondent is informed and believes that no secondary confirmatory testing of a subject is conducted to determine if the test results are consistent or could be false positives or false negatives.

Fourth, Respondent is informed and believes legitimate scientific testing has a margin of error that can be determined through repeated testing. Respondent is further informed and believes that no margin of error has ever been calculated for PPG - possibly due to the lack of standardization.

Fifth, Respondent is informed and believes that the PPG fails to meet the fourth factor set forth in the Council/Jones standard in that there is no consistency of the method with recognized scientific laws and procedures. As stated hereinabove, (1) there is no standardization of stimulus sets and interpretation of results between testing sites, (2) there are no quality control procedures in place to ensure reliability, as no method exists to determine if the results are accurate or a false positive or false negative, and (3) no margin of error has been established for PPG testing.

II.

In furtherance of the above that the PPG examination does not meet the requirements of admissibility of scientific evidence, and as a separate and stand-alone issue as to why testimony as to PPG testing should be suppressed and excluded in this matter the undersigned is informed and believes that the PPG test used in this case is one developed by Dr. William Burke of Summerville, S.C. Dr. Burke has restructured the testing procedure so that it is different from the PPG testing used in the past. This test now uses not only pictures (which are not standardized) but also differs from other PPG testing of the past. Unlike the PPG tests used in the past, Dr. Burke's test now incorporates Real Child Voices Stimulus (RCV), recorded, and placed into a scenario (again without standardization). The same issues and reasons set forth in Item I hereinabove apply here and are incorporated by reference.

III.

As noted in Item II hereinabove, Courts have recognized PPG testing as a tool used in the treatment of sex offenders but have found them to be inadmissible as evidence in court.

The purpose of PPG testing being used as a tool in treatment of sex offenders is for the initial test to establish a baseline which can be used in future PPG testing of the sex offender to determine if the treatment is being successful or if the other treatment should be employed.

PPG testing should not be used as a forensic diagnostic tool to determine sexual deviancy for purposes of predicting past or future actions of the person being tested.

IV.

In addition, respondent is informed and believes that such testimony is not relevant as defined in Rule 401 SCRE and should be excluded as inadmissible pursuant to Rule 402 SCRE.

Furthermore, should the court find the evidence to be relevant, the respondent contends that its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury and should be excluded pursuant to Rule 403 SCRE.

Don A. Thompson (SC Bar # 5545)
Attorney for Petitioner
2131 Woodruff Road
Suite 2100, #292
Greenville, S.C. 29607
(864) 270-2831

June 13, 2021
Greenville, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	CASE #: 2019-CP-04-01308
	)	
IN THE MATTER OF THE	)	
CARE AND TREATMENT OF;	)	STATE'S RETURN TO RESPONDENT'S
	)	MOTION TO SUPPRESS PPG TESTIMONY
JAMES LEWIS WILLIFORD,	)	
	)	
<u>RESPONDENT.</u>	)	

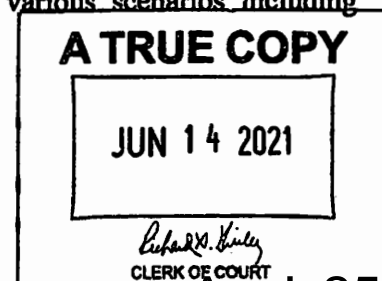
To: Don A. Thompson, Esq., Attorney for the Respondent

PLEASE TAKE NOTICE: The State, by and through the undersigned attorney, files this Return in opposition to Respondent's Motion to Suppress PPG Testimony. The following is submitted in response to the motion:

INTRODUCTION

After a probable cause hearing on October 22, 2019, Respondent was ordered to be evaluated pursuant to the Sexually Violent Predator Act ("SVPA"). On December 18, 2019, the Court appointed expert, Dr. Rozanna Tross, issued an evaluation finding Respondent does not meet the criteria for civil commitment under the SVPA. As allowed under S.C. Code Ann. Section 44-48-90 (C), the State sought an independent evaluation retaining the services of the Medical University of South Carolina's ("MUSC"). Dr. Emily Gottfried was assigned by MUSC to perform the evaluation.

On February 10, 2020, as part of the standard protocol of MUSC's Department of Psychiatry and Behavioral Sciences Sexual Behavior Clinic and Lab ("SBCL") for forensic psychosexual evaluations, Respondent consented to, and was administered a Penile Plethysmography examination ("PPG"). The results were interpretable, and indicated the Respondent experienced clinically significant sexual arousal to various scenarios including



coercion (rape) of an adult woman, coercion of a female child, violence against a female child, a female infant, consensual sexual activity with adult females, and persuasion of a male child.

The test was administered by an individual technician employed by the SBCL, who is trained and certified to administer the PPG. The raw data was then reviewed and interpreted by Dr. Gottfried, who has received extensive training and education in the administration and interpretation of the PPG. Further, the SBCL is certified by the PPG manufacturer as a PPG clinical research lab, the highest level of certification.

Dr. Gottfried considered the PPG results as one data point in rendering her opinion, and Respondent now seeks to suppress all testimony concerning the results of the PPG testing. The State submits this Return to the Motion to Suppress PPG testimony. If the court orders a hearing pursuant to *State v. Council*, 515 S.E.2d 208 (S.C. 1999) and its progeny, the State will have Dr. Gottfried prepared to testify concerning the reliability of the PPG.

ARGUMENT

- I. **Dr. Gottfried should be allowed to testify regarding PPG testing and results she used as a part of the basis of her opinion because the PPG is recognized and accepted in the field of sex offender evaluation and treatment as a reliable, objective measure of deviant sexual interests and meets the baseline standards for reliability under the *Council* standard.**

When there is a challenge to a particular type of evidence, the court must exercise its gatekeeping function to make a preliminary assessment of admissibility. *Watson v. Ford Motor Co.*, 699 S.E.2d 169, 174–75 (2010). Once the trial court makes a ruling that the particular evidence is admissible, then it is exclusively within the jury's province to decide how much weight the evidence deserves. *Id.*

The admission of expert testimony is governed by Rule 702, S.C.R.E., 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.

Further, under Rule 703, S.C.R.E,

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

Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge. Stated differently, expert evidence is required where a factual issue must be resolved with scientific, technical, or any other specialized knowledge. *Watson*, 699 S.E.2d at 175. Under the *Watson* standard, and its progeny, when there is a challenge to proffered expert evidence, the court must first make the following findings:

- (1) The subject matter is, in fact, beyond the knowledge of an ordinary juror;
- (2) The proffered expert has the knowledge and skill to be qualified as an expert on the subject matter; and
- (3) The substance of the testimony must be reliable.

In determining the reliability of the testimony, the court should examine the following factors:

- (1) 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, 515 S.E.2d at 518.

The South Carolina Supreme Court and Court of Appeals have referenced testimony regarding PPG results in analyzing the sufficiency of evidence to support the verdicts in several SVP cases. See *In re Care & Treatment of Tucker*, 578 S.E.2d 719, 721 (2003) ("Respondent was administered a Penile Plethysmograph (PPG), which is designed to measure sexual responsiveness to a variety of stimuli across gender, age, and sexual activity. The PPG suggested female and male

preschoolers (ages two to four years) aroused Respondent.”); *In re the Care and Treatment of Kennedy*, 578 S.E.2d 27, 38 (Ct. App. 2003) (In support of his argument, Kennedy asserts that because he passed the Penile Plethysmography (PPG) test, which is used to test sexual arousal to children, this was the best evidence that he would not re-offend.”). In addition, recent case law, reference books and treatises, indicate the PPG now has significant support in the mental health field.¹

1. History of the PPG.

The PPG’s history goes back to 1908, when a type of plethysmograph was used to check the effect of certain drugs on the vasomotor reflexes in dogs. Barker, James, and Howell, Robert, The Plethysmograph: A Review of Recent Literature, *Bull Am. Acad. Psychiatry Law*, 20(1): 13-25 (1992). In the 1930s, the medical community began using plethysmograph to assess erectile difficulties. *Id.*

Now, the PPG “is a widely recognized means of measuring male sexual arousal to given stimuli.” Murphy, L., *et. al.*, Standardization of Penile Plethysmography in Assessment of Problematic Sexual Interests, *J. Sex. Med.* 12(9): 1853-1861 (2015). It “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.” *Id.*; 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 “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,

¹Like virtually all areas of expertise, mental health experts’ disagreement regarding the validity of particular tests/tools used by a significant number of practitioners to diagnose and/or treat mental health issues goes to the evidence’s weight rather than its admissibility.

S. E., Sexual Arousal as a Function of Stimulus Mode: Implications for Phallometric Assessment, *J. Forensic Res.* 8(6):398 (2017) (PPG is “[p]erhaps the best means of objectively measuring deviant sexual interest”).

2. Purpose of the PPG.

The PPG’s general purpose is to measure male sexual arousal regardless of how the result is used, including assessing erectile dysfunction, checking function after a prostatectomy, or to determine the efficacy of sexual behavior treatment. The PPG is a physiological measure of physiological patterns of male sexual arousal.² W.T. O’Donohue & D.S. Bromberg (Eds.) *Sexually Violent Predators: A clinical science handbook* pp. 243-254. Cham, Switzerland: Springer, 2019 (Plaud, J.J., The use of penile plethysmography in SVP assessment and treatment decision-making.) As many individuals undergoing sexual behavior evaluations may be motivated to conceal arousal to deviant (i.e., nonconsensual/abusive) stimuli (i.e., sexual arousal to children), having a way to objectively assess this is vital for evaluations of future sexual dangerousness. Specifically, having deviant sexual interests, especially sexual arousal to children, is one of the strongest risk factors associated with sexual recidivism. Mann, R.E., Hanson, R.K., & Thornton, D., Assessing risk for sexual recidivism: Some proposals on the nature of psychologically meaningful risk factors, *Sexual Abuse: A Journal for Research and Treatment*, 22(2), 191-217

²There is a significant misconception regarding the PPG process. While the concept of the PPG is uncomfortable to many, the process is designed to protect personal privacy. The strain gauge (a small, rubber-like ring) is calibrated multiple times using licensed software prior to the examinee placing it on his penis. In fact, many PPG software calibration programs will not initiate a PPG test until the gauge has been properly calibrated. The examinee sits by himself in a private room and is presented with various stimuli. The stimuli are typically audio recordings and slides. In the United States, no child pornography is shown to the examinee via slides or video. The circumference of the flaccid penis at the start of each trial is compared to the maximum circumference during the trial. The PPG measures sexual arousal “by recording changes in the erectile tissue surrounding the penis as it becomes filled with blood” as “this is the most basic overt physiological manifestation of sexual arousal in the human male (Plaud, 2019, p. 244).

(2010); Hanson, R.K. & Morton-Bourgon, K.E., The accuracy of recidivism risk assessments for sexual offenders: A meta-analysis of 118 prediction studies, *Psychological Assessment*, 21(1), 1-21 (2009); Hanson, R.K. & Morton-Bourgon, K.E., The characteristics of persistent sexual offenders: A meta-analysis of recidivism studies, *Journal of Consulting and Clinical Psychology*, 73(6), 1154-1163 (2005); Hanson, R.K. & Bussiere, M.T., Predicting relapse: A meta-analysis of sexual offender recidivism studies, *Journal of Consulting and Clinical Psychology*, 66(2), 348-362 (1998).

3. Modern use and acceptance of PPG.

“Phallometric testing is currently used as a diagnostic, treatment planning, and risk management tool in a variety of jurisdictions” Wilson, R.J., The use of phallometric testing in the diagnosis, treatment, and risk management of male adults who have sexually offended, *The Wiley Handbook on the Theories, Assessment & Treatment of Sexual Offending: Volume 2*. (p. 823-849), In L. Craig & M. Rettenberger (Eds.) (2016). The PPG has undergone Federal Drug Administration review, and the FDA has approved several PPG systems, including the Limestone system used by the SBCL. See 501(k) Summary–Limestone Technologies, Inc. (https://www.accessdata.fda.gov/cdrh_docs/pdf5/K052929.pdf). Further, the Medicaid/Medicare regulations provide coverage for PPG tests. See 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>).

Blue Cross Blue Shield also recognizes the PPG as a medical procedure. See Blue Cross Blue Shield of Texas, Treatment of Male Sexual Dysfunction, Special Comment on Contract Exclusions(August15,2003) (<https://www.bcbstx.com/provider/pdf/medicalpolicies/medicine/202-018>). The Federal

Government's and major insurance companies' recognition of the PPG as a valid medical device and procedure amply demonstrates its general acceptance.

4. PPG's use in the mental health field.

The PPG's principal purpose in psychosexual sexual offending behavior evaluations is determining an individual's level of risk to commit future acts of sexual aggression. The PPG measures the extent to which the individual is dominated by sexual arousal to deviant stimuli, and predictions of risk to re-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 R. J. & Howes, S. E., Sexual Arousal as a Function of Stimulus Mode: Implications for Phallometric Assessment, *J. Forensic Res.* 8(6):398 (2017).³ See also Dean Tong, 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

³Both the polygraph and the PPG measure physical changes, but the PPG differs significantly in that it measures the size of an erection, which is either there or it is not. Unlike the polygraph, during which the examiner prepares and uses questions directly related to the matter under investigation, and makes subjective interpretations of responses as they occur, the PPG technician makes no such interpretation. The PPG results, *i.e.*, the size of the penis erection during certain stimuli, are recorded by the machine with the technician in a separate room. The evaluator then reviews the results and compares the level of arousal to one stimuli set versus another set, which is done by mathematical formula. Experts can disagree about the significance of one arousal over another, but that is no different from any other issue subject to expert opinion.

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.”); James M. Peters, Assessment and Treatment of Sex Offenders: What Attorneys Need to Know, *Advocate*, 23 (Dec. 1999) (PPG “is invaluable in the evaluation, treatment and management of known sexual offenders.”).

Further evidence of the PPG’s general acceptance in the mental health community, and perhaps the most compelling evidence, is the Diagnostic and Statistical Manual of Mental Disorders, Fifth Ed. (2013) (DSM-5), which mental health professionals often refer to as “the bible” for mental health diagnosis purposes. In the section regarding paraphilic disorders, the DSM-5 provides:

The most widely applicable framework for assessing the strength of a paraphilia itself is one in which examinees’ paraphilic sexual fantasies, interest and behaviors are evaluated in relation to their normophilic sexual interests and behaviors. In a clinical interview or on self-administered questionnaires, examinees can be asked whether the paraphilic sexual fantasies, urges or behaviors are weaker than, approximately equal to, or stronger than their normophilic sexual interest sexual interests and behaviors. The same type of **comparison can be, and usually is, employed in psychophysiological measures of sexual interest, such as penile plethymography in males or viewing time in males and females.**

DSM-5 ,p. 686 (emphasis added). It further 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 plethysomography, although sensitivity and specificity of diagnosis may vary from one site to another.**

DSM-5, p. 699 (emphasis added). Previous DSM versions did not recognize the PPG, however, by the time the DSM-5 was published in 2013, there was sufficient research indicating the PPG’s validity as a tool to measure an individual’s sexual interest.

The detailed analysis above demonstrates the PPG is a reliable test, is an accepted practice in the field of psychology, and should be admissible at trial. The admissibility of evidence at trial is a question for the trial court.

II. Respondent's assertion courts have uniformly found the PPG is inadmissible as evidence is factually incorrect and his reliance on *Bilton* is distinguishable in this case.

Some South Carolina circuit courts have admitted the PPG as evidence in sexually violent predator cases, while others have not. "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*, 851 S.E.2d 442, 444 (Ct. App. 2020), reh'g denied (Dec. 22, 2020).

In 2018, *In the Matter of the Care and Treatment of Ronald MJ Gregg*, a circuit court judge in Charleston County found the PPG admissible after a full *Council* hearing with expert testimony from two opposing experts, including Dr. Gottfried. *See EXHIBIT A*. Further, in June 2021, *In the Matter of the Care and Treatment of Andy Eugene Hyman*, a circuit court in Florence County found the PPG admissible after a full *Council* hearing with expert testimony from two opposing experts, including Dr. Gottfried.

In November 2020, *In the Matter of the Care and Treatment of Nichols*, a circuit court judge excluded the PPG. The *Nichols* case is readily distinguishable because it had the same issues the Court of Appeals addressed in *Bilton* specifically that the State's expert was testifying to PPG data supplied by another expert who performed the PPG in a different location. As in *Gregg* and *Hyman*, the PPG in this case was ordered by Dr. Gottfried, performed in a lab under her supervision by a technician trained and certified to perform PPG tests.

Respondent cites *Bilton*, as standing for the proposition that the PPG is either inherently unreliable, and/or is not a test that is permitted to be used in SVP matters. This is factually and legally wrong. *Bilton* stands solely for the proposition that expert testimony concerning the results of PPG testing may not be elicited as “conduit hearsay”; an expert who relied on the conclusions of another expert in forming an opinion and who did not interpret or review the raw data, may not testify concerning the results of the expert’s testing.

The Court of Appeals specifically noted the following “[w]e wish to emphasize that we are not called on to review whether some hypothetical procedure would qualify as a baseline demonstration that Bilton's PPG test results were reliable. We simply hold, as noted above, 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.” *Bilton*, 851 S.E.2d at 446. In short, an expert who did not administer or interpret PPG results for a given offender, may not testify concerning the substance or interpretability of those results. In this case, Dr. Gottfried conducted the PPG in the MUSC lab and she interpreted the data, as she is certified and qualified to do, which readily distinguishes this case from *Bilton*.

Other jurisdictions have also recognized the general acceptance and admissibility of the PPG in sexually violent predator cases. In 2015, a Florida circuit court in a Seminole County case found, after receiving testimony from two opposing experts, the underlying principals and methods of the PPG reliable and admissible under *Daubert* standard. *See Exhibit B, In RE: Rivers-Finney*.

Further, *In re Detention of Halgren*, 132 P.3d 714 (2006), the Washington Supreme Court found PPG results were admissible as part of the diagnostic process, and the PPG testimony would assist the jury in understanding the expert’s sexual deviancy diagnosis. *Id.* at 719. The court further found the issue of the PPG’s reliability goes to the weight of the evidence rather than its

admissibility *Id.*; see also *In re Detention of Herrick*, 393 P.3d 879, 885 (2017), *aff'd*, 412 P.3d 293 (2018)(same).

The Illinois appellate court also found PPG evidence was admissible in *In re Commitment of Sandry*, 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 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. Acknowledging some experts have criticized and 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*, 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).

III. The PPG testimony is relevant and admissible under Rule 401 and 402, SCRE, and the probative value is not 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.

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

The SVPA defines “[l]ikely to engage in acts of sexual violence” to mean “the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others.” S.C. Code Ann. §44-48-30 (9) Therefore, a person's dangerous propensities are the focus of the SVP Act. *In re Care & Treatment of Corley*, 577 S.E.2d 451, 453–54 (2003). Whether the offender is likely to reoffend is a significant element and highly relevant to the ultimate issue: whether the person is a sexually violent predator as defined by the SVPA.

Dr. Gottfried's testimony will illustrate why evidence regarding the PPG results are directly relevant to the ultimate issue of this case. Dr. Gottfried will testify it is important if a person's past offending behavior is similar in nature to his current sexual arousal, then the similarity is significant because it is evidence of a pattern of behavior which indicates an increased risk to commit future sexual offenses. Dr. Gottfried's interpretation of the PPG data point is relevant to her opinion regarding Respondent's current sexual arousal. Determining current arousal patterns and comparing them to past behaviors is another data point on which Dr. Gottfried relies. Respondent's sexual arousal is highly relevant to likelihood of re-offending and goes directly to the elements the State must prove. Thus, it is clear the PPG data Dr. Gottfried used in forming her

opinion is relevant to the issue of whether Respondent suffers from a mental abnormality which makes him likely to engage in acts of sexual violence again.

As discussed above, the PPG results are relevant to the ultimate issue and highly probative is assisting a jury in determining if Respondent suffers from a mental abnormality and speaks directly to his risk of re-offending. “Unfair prejudice is the tendency of the evidence to suggest a decision based on *something other* than the legitimate probative force of the evidence.” *State v. Phillips*, 844 S.E.2d 651, 656 (2020) (quoting *State v. Gray*, 759 S.E.2d 160, 163 (Ct. App. 2014) (emphasis added). A court “must then consider how important the challenged evidence is to resolving the practically disputed questions.” *Id.* at 655.

While the PPG data is prejudicial, it is not unfairly prejudicial. Respondent’s current sexual arousal and how it relates to his offending history is directly related to the question the jury must answer, which is whether Respondent presently has a mental abnormality that makes him likely commit acts of sexual violence if left untreated. The direct, legitimate probative force of the PPG testimony is not outweighed by any unfair prejudice to the Respondent. Dr. Gottfried’s testimony will be directly related to Respondent’s sexually violent offenses and behaviors, the PPG is just another data point in her testimony.

Recidivism is at the heart of the SVPA law, and in order for the jury to determine whether Respondent is a sexually violent predator, as define by the SVPA, it must determine whether he suffers from a mental abnormality or personality disorders that makes him likely to commit acts of sexual violence if not confined for long term control care and treatment. This requires assistance from the professional mental health community. Dr. Gottfried is highly qualified to determine what tests are necessary to form her opinion in a psychosexual evaluation, and should be allowed to testify as to what data points, including the PPG, she utilized in forming her opinion.

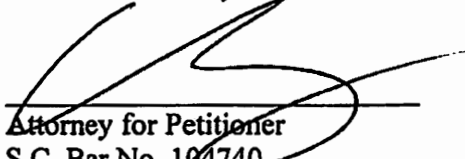
CONCLUSION

Dr. Gottfried has extensive training and experience with the PPG, is certified to interpret its results, and will testify the PPG is reliable and generally accepted in the mental health community. The result of the PPG exam is only one data point for Dr. Gottfried's comprehensive psychosexual evaluation, but it is a valuable data point. It is particularly important in this case because of the nature of Respondent's offending patterns, and his claim that he is not aroused by coercive non-consensual sex. The results of Respondent's PPG examination directly contradict his claims, and reveal clinically significant sexual arousal to coercive sexual assaults of adult women which indicate it is still an active risk for him. In terms of his risk to recidivate, this is a primary question to be answered by the jury. As such, the State respectfully requests the court to find the results of Respondent's PPG examination meets the threshold standard of reliability under *Council*, and allow the testimony to be heard by the jury, and for the jury to give the evidence whatever weight and credibility it finds most appropriate.

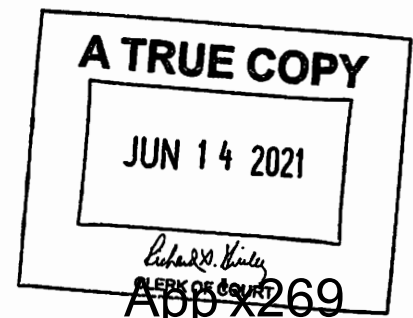
Respectfully submitted,

ALAN WILSON
ATTORNEY GENERAL

CHRISTOPHER S. RUNYAN
Assistant Attorney General


Attorney for Petitioner
S.C. Bar No. 104740
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
V: (803) 734-1173
crunyan@scag.gov

June 13, 2021
Columbia, South Carolina



STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
State of South Carolina,	)	CASE NO. 2018-CP-10-03472
	)	
PETITIONER,	)	TRANSCRIPT OF RECORD
	)	
	)	ORIGINAL
	)	
In the Interest of the Care	)	
and Treatment of Ronald MJ	)	
Gregg,	)	
	)	
RESPONDENT.	)	

November 20 and 21, 2019

Charleston, South Carolina

B E F O R E:

The Honorable Deadra L. Jefferson, and a Jury.

A P P E A R A N C E S:

James G. Bogle, Jr., Esquire
For the Petitioner

James K. Falk, Esquire
For the Respondent

Certified Transcript Provided For: SCCID

Phyllis Norton, CVR-Master, Nationally Certified Verbatim Court Reporter
636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464
PNorton@sccourts.org

1 too.

2 So because I had three months to submit this and this was
3 on April 18th - because we had to bring him back in for a
4 second PPG it kind of delayed the timeline of the evaluation,
5 so I told him your attorney can absolutely observe.

6 In fact, I wanted to call you because I thought that he
7 might be more cooperative with the evaluation process. So I
8 said you can call your attorney, I can have Allison our
9 secretary try to reach him and we can see if he is available
10 so he can come but I can't necessarily like schedule you for
11 another day because of the due date.

12 So, yes, I did explain that to him that I could try to
13 get in touch with you to see if you could come on that day.
14 But he declined.

15 Q. Just that last sentence, you are not saying that you
16 contacted me three times on the 18th, are you?

17 A. No, I offered to try to get in touch with you.

18 MR. FALK: No further questions.

19 THE COURT: Any redirect?

20 MR. BOGEL: No, Your Honor. Thank you.

21 THE COURT: Doctor, you can step down.

22 [WHEREUPON, witness steps down]

23 MOTIONS:

24 THE COURT: The defense has -- the respondent in this
25 case has raised several issues regarding the PPG. One deals

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1 with the reliability of the science. The others deal with
2 constitutional grounds, that being his right against
3 self-incrimination as well as it being an unreasonable search
4 and seizure.

5 And I am going to take them in the order -- well, in some
6 order. I don't know that it is in the exact order that it is
7 articulated in his motion. And he also raises the substantive
8 due process ground which I would say preliminarily I do not
9 find persuasive.

10 Substantive due process deals with there being a
11 procedure by which certain things are compelled or done. And
12 he clearly had a process by which he could have objected to
13 the tests, and I think that is nullified by the fact that he
14 voluntarily -- freely and voluntarily signed a consent to the
15 test and was aware at any time that he could have withdrawn
16 that consent.

17 But dealing in the order of the scientific reliability of
18 the PPG testing, as we all know, the admissibility of
19 scientific evidence is within the province and discretion of
20 the Court. Our courts have been very clear that the Court
21 should take very seriously its responsibility in a gatekeeper
22 providence in terms of determining what is most critical, that
23 being the reliability of the science.

24 Because the issues that have been raised or the
25 objections that have been raised are not based on the

1 expertise of the witness, that being whether the witness has
2 the -- has sufficient education, training, and experience to
3 be qualified as an expert. The respondent's whole argument
4 rests on the admissibility of the science, that being the
5 reliability of the science.

6 And I think clearly under Rule 702 the evidence will
7 assist the trier of fact that it is outside of the realm of
8 the ordinary knowledge of a juror.

9 And, again, as I have indicated, no one is really
10 challenging whether the expert witness is qualified. What is
11 being questioned is the underlying science and whether it is
12 reliable. And clearly in my estimation the probative value of
13 the evidence would outweigh his prejudicial effect to the
14 respondent.

15 And the parties do not dispute that expert testimony
16 would assist the trier of fact, as they both have experts that
17 they contend are qualified and that they both intend to
18 introduce to offer expert testimony to aid the jury in making
19 a decision regarding the evidence that the State must prove in
20 order for Mr. Gregg to be civilly committed.

21 The respondent contends the underlying science of the PPG
22 testing is unreliable. I have reviewed the relevant cases. I
23 have heard the parties' arguments. And I have heard both --
24 had the benefit both of the testimony of Dr. Gehle and Mr.
25 Gottfried regarding those issues, and I would find at least at

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1 this point preliminarily -- and I guess I will tell you in
2 advance, I am not making a final decision about the
3 admissibility of the PPG testing.

4 What I am going to instruct is that when we get to that
5 part of the testimony I want to hear it in camera. I need to
6 hear it in its context. I need to hear how it is going to be
7 presented, and at that time I will make a final ruling. That
8 way we will have a proffer in the event that I would -- should
9 decide that it is not admissible.

10 But preliminarily and in the interest of time I am going
11 to make the following -- I have made the following -- the
12 previous findings of fact. I am going to make some additional
13 findings. But I still out of an abundance of caution want to
14 handle it in the way I have just indicated.

15 In order to determine the reliability of scientific
16 testimony the Court must look at publications and peer-review
17 the technique, prior applications and method to the type of
18 evidence involved in the case, the quality control procedures
19 used to ensure reliability, and the consistency of the method
20 with recognized scientific laws and procedures.

21 And that is based on Graves versus CAS Medical Services
22 Incorporated, State versus Council, State versus Mealor,
23 M-E-A-L-O-R, all of which are South Carolina Supreme Court
24 precedent with the exception of Mealor which is a 2019 Court
25 of Appeals decision.

1 Whether the publications have been subject to a peer-
2 review technique, I find credible Dr. Gottfried's testimony
3 that in her opining that the PPG testing is subject -- is the
4 subject of numerous publications and has been subject to
5 extensive peer review. While peer-review articles do not
6 exist for the Burke Real Child Voices Stimuli Set used for the
7 respondent's PPG test, Dr. Gottfried testified that peer-
8 reviewed articles do exist for the Marshal set of stimuli used
9 for the respondent's PPG test.

10 She also testified that she is a member of the
11 International Standards Group that assesses and creates
12 standardizations and rules for the PPG exam and the PPG
13 testing is generally acceptable within the psychological
14 community.

15 As regards to prior application of the method to the type
16 of evidence involved in the case, Dr. Gottfried likewise
17 testified that MUSC has performed many PPG tests and that all
18 PPG tests conducted at MUSC are conducted in the same manner,
19 that the PPG performed on the respondent was conducted with
20 Limestone Technologies, Incorporated, hardware and software
21 and that this hardware and software is used for every PPG
22 conducted by MUSC.

23 Limestone Technologies, Incorporated, PPG test is shipped
24 with the Real Burke -- with the Burke Real Child Voices
25 Stimuli Set. And she also testified that the Burke Real Child

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1 Voices Stimuli Set is used in between 40 and 85 labs across
2 the country.

3 The quality control procedures used to ensure
4 reliability: According to her testimony the PPG testing
5 performed by MUSC including the PPG test administered to Mr.
6 Gregg was conducted with Limestone Technologies, Incorporated,
7 hardware and software. That Limestone provides free test
8 software, data pat gauge, stimuli sets, and other materials
9 required to conduct PPG tests.

10 She also testified that she is certified to operate
11 Limestone's hardware and software. And as well she testified
12 that the gauges used are calibrated several times before and
13 during the administration of a PPG test, that countermeasures
14 are used, and that there are standardized instructions
15 included with Limestone's machine.

16 She also testified that the lab used by MUSC to
17 administer the PPG test is research certified at the highest
18 level and that the lab is humidity and temperature controlled.
19 She also testified that the PPG test measures the subject's
20 physiological responses to stimuli by measuring the change in
21 circumference of the subject's genitalia.

22 Dr. Gottfried likewise testified that MUSC uses a more
23 conservative response threshold to denote a response within
24 the PPG test.

25 Specifically she testified that many labs note a response

1 or change within the subject if the circumference increases by
2 between one to two-and-a-half millimeters; however, to improve
3 reliability and reduce the number of false positives she
4 testified that MUSC uses a more conservative criteria of five
5 millimeters and that even though that may allow those who are
6 measuring a response to escape detection, that they feel that
7 it is more prudent to use a more conservative approach to
8 limit to the best that they can or mitigate false positives.

9 She also testified that a large portion of the
10 unreliability often attributed to the PP -- she testified that
11 the smaller measurement also accounted for a large portion of
12 the unreliability often attributed to the PPG test.

13 She noted that there is often inconsistency of results
14 between labs because some labs outside of the United States
15 use photographs depicting child pornography as stimuli sets,
16 whereas labs in the United States do not. And the reference
17 was not just to labs outside of the United States but those in
18 Canada which use a far lower threshold as to whether other
19 stimuli.

20 And as an aside, Dr. Gehle -- the majority of Dr. Gehle's
21 testimony really dealt with periodicals she had read, instead
22 of first-hand experience; as well as references to labs
23 outside of the United States that use the less standardized
24 approach.

25 The last criteria, the consistency of the methods which

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1 recognize scientific laws and procedures: Dr. Gottfried
2 testified that the Diagnostic and Statistical Manual of Mental
3 Disorders, Fifth Edition, which the acronym DSM-5, is the
4 leading diagnostic manual used by healthcare professionals to
5 diagnose mental disorders, that it is published by the
6 American Psychiatric Association and it is the product of more
7 than ten years of efforts by hundreds of international experts
8 in all aspects of mental health. The DSM-5 is an
9 authoritative volume that defines and classifies mental
10 disorders in order to improve diagnoses, treatment, and
11 research.

12 She further noted that the DSM-5 recognizes the use of
13 PPG testing and that the DSM-5 states: Physiological measures
14 of sexual interest may sometimes be useful when an
15 individual's history suggests the possible presence of
16 pedophilic disorder but the individual denies strong or
17 preferential attraction to children. The most thoroughly
18 researched and longest used of such measures is penile
19 plethysmograph, or the PPG, although sensitivity and
20 specificity of diagnosis may vary from one cite to another
21 cite. Citing the DSM-5 at Page 699.

22 I would find preliminary that Dr. Gottfried's experience
23 is more extensive. I find her testimony more credible on the
24 issue of the reliability of the PPG. And preliminarily, as I
25 have indicated, it would be my ruling based on the reliability

1 factors that the PPG testimony would come in. However, I want
2 to hear it in camera again to create a proffer out of an
3 abundance of caution.

4 As regards to the other arguments made by the defendant
5 regarding his constitutional -- the basis of any
6 constitutional argument, that is that the PPG is an
7 unwarranted and unreasonable search and seizure of him, he has
8 argued and he is correct that constitutional provisions do
9 apply in a civil context; however, there are limitations and
10 exceptions to those constitutional rights.

11 For example, if somebody was testifying and inculcating
12 themselves in a criminal -- in a civil case to a criminal
13 matter I would stop immediately and advise them of their
14 rights against self-incrimination and also advise them that
15 they have a right to counsel. However, there are exceptions
16 to those rules. That -- and the one -- the critical one being
17 that of consent.

18 And sort of a little -- I am going a little out of order.
19 There are certain constitutional rights that you can waive.
20 And by virtue of the fact that he entered into this agreement
21 for the PPG consensually, that he was fully advised of the
22 right to stop the test at any time, it is almost no different
23 than when a person is advised pursuant to Jackson versus Denno
24 of their right to give a statement and to stop that statement
25 at any time. At least it is analogous.

PROFFER

CROSS-EXAMINATION BY MR. FALK OF DR. GOTTFRIED (IC)

1 curve. But I can't see the number.

2 Q. No further questions.

3 THE COURT: Any redirect?

4 MR. BOGLE: No, Your Honor.

5 THE COURT: Is there any additional exception to the
6 admissibility of the PPG other than the argument I have
7 already heard; from the State?

8 MR. BOGLE: Nothing more from the State, Your Honor.

9 THE COURT: From the defense?

10 MR. FALK: Nothing more than what you have already heard.

11 THE COURT: I am standing by my earlier ruling. I am
12 incorporating those findings into this portion of the record
13 as if stated verbatim. The PPG is admissible. I will note
14 the objection and overrule it based on the Court's previous
15 ruling.

16 Do y'all need to take a break before ---

17 MR. FALK: Your Honor, can I ask ---

18 THE COURT: It is almost time for Mr. Gregg to have his
19 prayers.

20 MR. FALK: I don't know -- since it is already coming
21 in -- and I -- her testimony regarding the first test that
22 didn't work -- never mind. I am okay -- I will just cover --
23 I can cover that in cross.

24 THE COURT: Okay.

25 MR. FALK: Yeah.

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR SEMINOLE COUNTY, FLORIDA

CASE NO. 13-CA-2970-16-A

IN RE: the commitment of:

JEFF C. RIVERS-FINNEY,

Respondent.

**ORDER PERMITTING DEFENDANT TO PRESENT PENILE PLETHYSMOGRAPH
EVIDENCE BUT EXCLUDING POLYGRAPH EVIDENCE FROM TRIAL**

The State has initiated proceedings to have the Respondent civilly committed as a sexually violent predator.¹ The Respondent is seeking to introduce expert testimony relating to the administration and results of a polygraph examination and a penile plethysmograph (PPG) examination in support of his claims that he should not be civilly committed.

The State filed a "Motion in Limine" on March 3, 2015 in which it seeks to exclude that evidence because it does not comply with the requirements of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and Fla. Stat. §90.702. An evidentiary hearing was held on August 18, 2015 and was concluded on November 16, 2015. The Court heard testimony from two defense experts, Dr. Robin Wilson and Dr. George Deitchman, and one State expert, Dr. Michael Gamache.

The experts explained to the Court the methodology of the particular tests and the information that the tests are designed to reveal. A polygraph test measures a person's involuntary physiological responses to determine whether a person is being deceptive when answering questions. A penile plethysmograph measures a man's physical arousal when exposed to sexually suggestive materials. The results of this test would purportedly be probative in determining whether the Respondent would be a risk to engage in sexually violent behavior if he is not civilly committed.

Dr. Wilson has been involved in the diagnosis and treatment of sexual offenders since 1984. He was associated early in his career with Dr. Kurt Freund, who was a pioneer in PPG methodology, and he has conducted many studies regarding its predictive capabilities. He was eventually appointed as the first clinical director of the Florida Civil Commitment Center and he served in that capacity from 2007-2011. Dr. Deitchman is the practitioner who actually administered the PPG and polygraph test to the Respondent. Dr. Gamache testified in opposition to those witnesses, testifying generally that the tests are often used in treatment for various purposes, but they are not sufficiently reliable for admission in a trial.

¹ The parties have stipulated to a non-jury trial.

Fla. Stat. §90.702 sets forth the predicate for admissibility of expert testimony. The Florida Legislature modified that statute in 2013 to adopt the test used by Federal courts, as provided in *Daubert*, rather than the “general acceptance” test previously used in Florida, as set forth in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).

Until recently, there were two avenues under this rule to the admissibility of expert testimony under Florida law. First, if the proposed expert testimony espoused a “new or novel” scientific theory, principle or discovery, then “the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the field in which it belongs.” See *Marsh*, 977 So. 2d at 546 (quoting *Frye*, 293 F. at 1014) (emphasis added). This path to admissibility is commonly known as the “*Frye* test.” In *Frye*, the “thing” the D.C. Circuit found to lack “general acceptance” in its field was the result of a “systolic blood pressure deception test,” an early polygraph. *Id.*

The second path to admissibility of expert testimony until recently was the “pure opinion” path. Under this path, if the proposed testimony is not “new or novel,” but instead is based upon the expert’s personal experience, observation, and training, the *Frye* test does not apply to the ultimate opinion of an expert, so long as the methods used to reach the opinion were generally accepted scientific methods under *Frye*. See *Marsh*, 977 So. 2d at 548–49 ...

Under *Daubert*, “the subject of an expert’s testimony must be ‘scientific knowledge.’ ” 509 U.S. at 590, 113 S.Ct. 2786. “[I]n order to qualify as ‘scientific knowledge,’ an inference or assertion must be derived by the scientific method.” *Id.* (emphasis added). The touchstone of the scientific method is empirical testing—developing hypotheses and testing them through blind experiments to see if they can be verified. *Id.* at 593, 113 S.Ct. 2786; see also *Black’s Law Dictionary* 1465–66 (9th ed. 2009) (“[S]cientific method [is] an analytical technique by which a hypothesis is formulated and then systematically tested through observation and experimentation.”). As the United States Supreme Court explained in *Daubert*, “This methodology is what distinguishes science from other fields of human inquiry.” *Id.* at 593, 113 S.Ct. 2786. Thus, “a key question to be answered” in any *Daubert* inquiry is whether the proposed testimony qualifies as “scientific knowledge” as it is understood and applied in the field of science to aid the trier of fact with information that actually can be or has been tested within the scientific method. *Id.* “General acceptance” [from the *Frye* test] can also have a bearing on the inquiry, as can error rates and whether the theory or technique has been subjected to peer review and publication. *Id.* at 593–594, 113 S.Ct. 2786. Thus, there remains some play in the joints. However, “general acceptance in the scientific community” alone is no longer a sufficient basis for the admissibility of expert testimony. It “is simply one factor among several.” *Marsh*, 977 So. 2d at 547 (citing *Daubert*, 509 U.S. at 594, 113 S.Ct. 2786). Subjective belief and unsupported speculation are henceforth inadmissible. See *Daubert*, 509 U.S. at 590, 113 S.Ct. 2786.

Perez v. Bell S. Telecommunications, Inc., 138 So. 3d 492, 496–99 (Fla. 3d DCA 2014) review denied sub nom, *Perez v. Bell S. Telecomm., Inc.*, 153 So. 3d 908 (Fla. 2014) (emphasis in original). Fla. Stat. §90.702 applies to all expert opinion testimony, not only to new or novel scientific evidence. *Perez*, 138 So. 3d at 497.

The *Daubert* test requires this Court to analyze the proffered expert testimony using a three part test. Fla. Stat. §90.702 reads:

If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or otherwise, if:

- (1) The testimony is based upon sufficient facts or data;
- (2) The testimony is the product of reliable principles and methods; and
- (3) The witness has applied the principles and methods reliably to the facts of the case.

Since the Respondent is seeking to introduce this evidence, he bears the burden of proof to show by a preponderance of the evidence that the evidence is both relevant and reliable. *United States v. Frazier*, 387 F.3d 1244, 1260 (11th Cir. 2004).

While the language and intent of Fla. Stat. §90.702 is clear, it is not settled whether this Court must apply the *Frye* or the *Daubert* standard. If the rule governing the admissibility of expert testimony is a procedural rule, it must be promulgated by the Florida Supreme Court, but if it is a substantive rule, it may properly be enacted by the Legislature. Rules of evidence often have both procedural and substantive principles, and there is no "standard that can mechanically be applied to separate the procedural from the substantive." *In re Commitment of Cartwright*, 870 So. 2d 152, 158 (Fla. 2d DCA 2004). This Court has not been asked to resolve this question, as the State has moved to exclude this evidence under *Daubert*, and the Respondent has not disputed the application of this evidentiary standard. In an abundance of caution, however, this Court will also review the evidence under the *Frye* framework.

Under either standard, results of the polygraph examination would not be admissible. "Polygraph evidence is generally inadmissible in Florida." *Gosciminski v. State*, 132 So. 3d 678, 701 (Fla. 2013), *reh'g denied* (Jan. 28, 2014), *cert. denied*, 135 S. Ct. 57 (2014). *Gosciminski* addressed the admissibility of polygraphs using the *Frye* standard. *Id.* at 701-04. The testimony in support of and in opposition of polygraph evidence in *Gosciminski* was generally similar to the testimony of Dr. Deitchman and Dr. Gamache, respectively. As in *Gosciminski*, this Court finds that under *Frye*, the polygraph results are not sufficiently reliable to be used as evidence at the trial. *Id.* at 704; *see also Davis v. State*, 520 So. 2d 572, 573-74 (Fla. 1988) (recognizing that "[t]he courts of this state have repeatedly held that the factors contributing to the results of a polygraph test – the skill of the operator, the emotional state of the person tested, the fallibility of the machine, and the lack of a specific quantitative relationship between physiological and emotional states – are such that the polygraph cannot be recognized as a sufficiently reliable or valid instrument to warrant its use in judicial proceedings unless both sides agree to its use").

This determination does not change when evaluating the evidence under *Daubert*. According to *Daubert*, the primary question is no longer focused solely upon the general acceptance of the scientific

opinion. Now, the Court's should focus on the reliability of the science and the application of the scientific method to the facts of the case. As noted in the case law and as reinforced by Dr. Gamache, there are many factors that are inherent and unavoidable in polygraph examinations which render that type of test scientifically unreliable. The results can vary widely depending upon several factors, including the operator's methodology and questions, the subject's emotional state, and whether the subject has taken a polygraph before. Based upon these factors, the polygraph test is inadmissible under *Daubert*.

Beyond the scientific unreliability of the polygraph test, the evidence that it would be conveying is improper. Expert opinion testimony is permissible when it will "assist the trier of fact in understanding the evidence or in determining a fact in issue." See Fla. Stat. §90.702. The results of a polygraph test do not offer such assistance to the factfinder.

By its very nature, polygraph evidence may diminish the jury's role in making credibility determinations. The common form of polygraph test measures a variety of physiological responses to a set of questions asked by the examiner, who then interprets these physiological correlates of anxiety and offers an opinion to the jury about whether the witness—often, as in this case, the accused—was deceptive in answering questions about the very matters at issue in the trial. See 1 McCormick §206. Unlike other expert witnesses who testify about factual matters outside the jurors' knowledge, such as the analysis of fingerprints, ballistics, or DNA found at a crime scene, a polygraph expert can supply the jury only with another opinion, in addition to its own, about whether the witness was telling the truth. Jurisdictions, in promulgating rules of evidence, may legitimately be concerned about the risk that juries will give excessive weight to the opinions of a polygrapher, clothed as they are in scientific expertise and at times offering, as in respondent's case, a conclusion about the ultimate issue in the trial.

United States v. Scheffer, 523 U.S. 303, 313-14 (1998) (footnote omitted). The factfinder is tasked with making credibility determinations in fashioning the verdict. The use of a polygraph expert would tend to usurp that role by substituting his opinion of the witness' credibility in place of the factfinder's determination. This danger is one of the primary reasons that polygraph testimony is not generally admissible at trial. This Court finds that, even outside of *Daubert* or *Frye*, such testimony would not be proper under Fla. Stat. §90.702.

As opposed to polygraph evidence, PPG evidence is admissible in this case under both *Frye* and *Daubert*. Such evidence is neither new nor novel, so a *Frye* inquiry would be improper. *State v. Fulwood*, 22 So. 3d 655 (Fla. 3d DCA 2009). That determination is binding on this Court. *Conley v. State*, 129 So. 3d 1120, 1121 (Fla. 1st DCA 2013). Thus, under the *Frye* framework, PPG evidence is admissible.

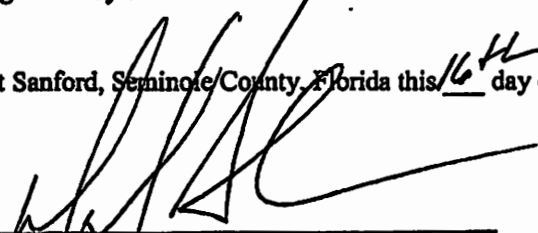
Based upon the evidence presented, the results of the PPG testing would also be admissible under *Daubert*. Drs. Wilson and Deitchman both testified about the usefulness of PPG testing based upon their substantial experience with conducting the tests and their familiarity with the literature and studies

regarding those tests. Dr. Gamache, on the other hand, has little first-hand experience in conducting PPG testing, as he has only conducted 3-4 tests in the 1980's. All three experts noted that the test is useful for treatment purposes, even though they all conceded that a subject can take steps to minimize arousal by employing distraction techniques. Dr. Deitchman mitigated this concern by requiring the Respondent to push a button when the picture changes to ensure that he was paying attention to the stimulus. Dr. Gamache takes issue with Limestone's standard stimulus materials, noting that they have become tamer due to limitations resulting from federal law, and he pointed out deficiencies he sees in the studies on PPG testing. However, his lack of experience with PPG testing as it exists today renders his expertise on this topic somewhat limited. As to PPG testing, then, this Court finds that the underlying principals and methods are scientifically reliable and Dr. Deitchman conducted the test in a scientifically reliable manner as applied to the facts of this case. As such, the expert opinion testimony on PPG testing is admissible under *Daubert*.

ORDERED AND ADJUDGED:

1. Evidence relating to penile plethysmograph testing is admissible at trial.
2. Evidence relating to polygraph testing is hereby excluded from evidence at trial.

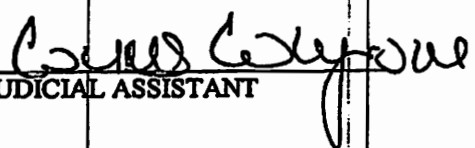
DONE AND ORDERED in chambers at Sanford, Seminole County, Florida this 16th day of December, 2015.


MARLENE M. ALVA, Circuit Judge

Copies furnished this 16th day of December, 2015 to:

Ann M. Ferrin, Esquire
Assistant State Attorney
2725 Judge Fran Jamieson Way, Building D
Viera, FL 32940

Arthur J. Kutsche, Esquire
Assistant Public Defender
800 South Street, Suite 1E
Titusville, FL 32780


JUDICIAL ASSISTANT

ORDER OF COMMITMENT

App'x286

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,



Sarah E. Shipe
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 20th day of July, 2022.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF JAMES L. WILLIFORD,

APPELLANT.

APPELLATE CASE NO. 2021-000733

FINAL BRIEF OF APPELLANT

SARAH E. SHIPE
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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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in admitting penile plethysmograph testimony and results where the examination did not meet the requirements of admissibility for scientific evidence pursuant to Rule 702, SCRE, because the test lacked: (1) standardization; (2) adequate publication and peer review; (3) quality control procedures to ensure reliability; and (4) a calculation of margin of error?

STATEMENT OF THE CASE

The Attorney General initiated sexual violent predator commitment proceedings against appellant James L. Williford in Anderson County and on June 14, 2021, a bench trial was held before the Honorable R. Scott Sprouse. R. 1. Christopher Runyan and Suzanne Shaw represented the state. R. 2. Don Thompson represented appellant. R. 2. Judge Sprouse found appellant was a sexually violent predator and ordered him committed. Order.

This appeal follows.

STANDARD OF REVIEW

“An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” *In re Gonzalez*, 409 S.C. 621, 628, 763 S.E.2d 210, 213 (2014) (internal quotations omitted).

ARGUMENT

The trial court erred in admitting penile plethysmograph testimony and results where the examination did not meet the requirements of admissibility for scientific evidence pursuant to Rule 702, SCRE, because the test lacked: (1) standardization; (2) adequate publication and peer review; (3) quality control procedures to ensure reliability; and (4) a calculation of margin of error.

Relevant facts

Before trial, defense counsel made a motion to suppress testimony related to the penile plethysmograph (PPG) test and results because it did not meet the “requirements of admissibility for scientific evidence.” R. 248; R. 21-28. Defense counsel asserted that testimony about the PPG test and the results were inadmissible because the test: (1); lacked standardization (2); had not been adequately published or peer reviewed (3); had no quality control procedures; (4) did not calculate a margin of error. R. 22-24. Defense counsel also argued that the prejudicial effect of the PPG test evidence far outweighed any probative value that it had. R. 28, ll. 1-5

The state proffered testimony regarding the PPG test through its expert Dr. Emily Gottfried from The Medical University of South Carolina (MUSC).¹ R. 30, l. 1-31, 1.2. Gottfried became involved in this case when the Attorney General’s office asked her for a second opinion in the pre-commitment evaluation of Williford. R. 95, ll. 1-10. Gottfried explained that the PPG test is a physiological test given to an individual to test their arousal. She explained that the examinee sits in a private room and places a gauge, a thin flexible stretchy band, on his penis. Then the examinee is presented with a series, a trial, of audio or visual stimuli of sexual situations. The test measures the changes of circumference in response to the stimuli. R. 38, ll. 3-17. Gottfried insisted

¹ Gottfried’s proffered testimony about the PPG test was incorporated by reference because this was a bench trial and the court had already heard the testimony. R. 93, ll. 1-14.

throughout her testimony that the PPG test was just one data point to consider, but she also stated, “sexual arousals due to nonconsensual or abusive stimuli is a strong predictor of future sexual recidivism.” R. 35, ll. 10-13.

Gottfried testified that her lab uses two different stimulus sets. One, developed by Bill Marshall, called the Marshall Test. The Marshall test set is audio descriptions of sexual stimuli and neutral stimuli. The other, developed by Bill Burke, called Real Child Voices (RCV). RCV consists of visual slides and audio which includes children’s voices and women’s voices. R. 54-55.

Gottfried admitted there were problems with standardization of the PPG test because it was used for different things and acknowledged that it was hard to know what every lab that conducts this test does. R. 42, ll. 8-10; 73, ll. 1-5. Gottfried also recognized that some literature said that offenders do not show expected arousal patterns on the PPG. R. 50, ll. 19-22. She said that she was working with a group of individuals to address some of the issues with standardization. R. 43, 3-7; 50, ll. 13-18. Gottfried acknowledged that there are ways to manipulate the test to show false positives and false negatives. R. 73-74.

Gottfried testified that she had both published articles specific to the PPG test and presented at conferences about it. R. 32-33. She contended that it had been peer reviewed and that there had been “at least a hundred publications” about the PPG test specific to abusive or illegal sexual behaviors. R. 36, ll. 12-23. The state’s attorney asked Gottfried to read two sections from the Diagnostic Statistical Manual of Mental Disorders² where the PPG test is mentioned. R. 46-47.

Limestone Technology is a Canadian Company that makes the hardware used in the PPG

² American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (5th ed. 2013).

test and some of the software used in the test. R. 69, ll. 2-3. Gottfried testified that she and the technicians at her lab are trained in the PPG. Gottfried said she was certified in the PPG test as a “licensed technologies certified clinical analyst” and her clinic and lab were certified by Limestone Technologies as both a clinical and research laboratory. R. 34-35; 39, ll. 15-20. She also testified that each examinee is given a new gauge which is calibrated on a five-step program before the test starts. R. 39, ll. 21-23. The countermeasures Gottfried described using were as follows: (1) a soundcheck, (2) monitoring the temperature and humidity of the room, and (3) standardized instructions. R. 40, ll. 2-10.

Gottfried testified that there are twenty-seven trials in the Marshall set and twenty-four in the RCV set and both were given to Williford. She said that they do not conduct multiple PPG tests on an individual. R. 75, ll. 6-10. She explained that the lab at MUSC uses a “very conservative cut score,” which is a “clinical decision made about what is significant and what isn’t significant.” R. 41, ll. 12-17. When asked if there had ever been a margin of error calculated on the PPG test Gottfried responded that specificity and sensitivity account for the margin of error. R. 75. Gottfried explained that sensitivity is a “true positive,” someone who is aroused by certain stimuli and the PPG test shows that they are aroused by that same stimulus. Specificity is a “true negative,” where a person is not aroused by a specific stimulus and the PPG test shows that they are not aroused by those stimuli. R. 52, l. 17-53, l. 1.

Gottfried stressed that the PPG test should not be used as the sole criterion for any decisions and said it would be unethical to test someone who had never been charged or convicted of a sexual offense. She stated that the PPG test does not tell you anything other than what the examinee is aroused to that day in the lab. R. 44-45.

The court denied the motion to suppress finding that the PPG testimony would assist the

court as the trier of fact in understanding the evidence, which involved scientific issues outside the realm of the ordinary knowledge of a lay person. R. 89, l. 22-90, l. 4. The court found that the PPG test had been subject to peer review and “numerous publications.” R. 90, ll. 11-19. The court found that, although the testimony indicated there were different standards in some countries, there was a standard application of the test in the United States, based on Gottfried’s testimony. R. 90, l. 20-91, l. 4. The court found the standard for quality control procedures was met. R. 91, ll. 5-13. Lastly, the court found that the standard for “consistency and method with recognized scientific laws and procedures,” was met where Gottfried used the standard instructions provided by the manufacturer of the test and testified that there were methods to prevent manipulation of the test. R. 91, l. 14-92.

Williford was given both the Marshall stimulus set and the RCV stimulus set. R. 59, ll. 5-10; 122, ll. 16-18. Gottfried said that recently the lab began tailoring the RCV set to the “offending pattern” of the examinee, but Williford’s examination was not tailored. R. 56, ll. 1-10. Gottfried testified that Williford showed “clinically significant arousal” to trials involving coercion or sexual violence of an adult woman; coercion of a female child; violence against a female child or infant; consensual sexual behavior with an adult woman, and persuasion of a male child. R. 122, l. 25-123, l. 6. Gottfried testified that the data from the PPG test factored into her ultimate opinion regarding Williford. R. 121, l. 24-122, l. 1.

Discussion

The trial court abused its discretion in admitting Dr. Gottfried’s testimony about the PPG test and results from the test given to Williford because it lacks scientific reliability and validity. *See generally Matter of Bilton*, 432 S.C. 157, 162, 851 S.E.2d 442, 444 (2020) (Stating “[t]he test

is controversial and has been criticized for a lack of standardization and for being subject to manipulation.”).

“When admitting scientific evidence under Rule 702, SCRE, the trial judge must find the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable.” *State v. Council*, 335 S.C. 1, 20–21, 515 S.E.2d 508, 518 (1999). The trial court should apply the *State v. Jones*, 273 S.C. 723, 259 S.E.2d 120 (1979), factors to determine reliability. *Id.*

The *Jones* factors, include: (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. Ford*, 301 S.C. 485, 392 S.E.2d 781 (1990).

The court erred finding Gottfried’s testimony about the PPG test was admissible under the *Jones* factors. While the PPG test has long been written about at least one publication that Gottfried mentioned specifically was not relevant to its use in this case.³ R. 37-38. Additionally, much of Gottfried’s testimony regarding this factor was that she had written about the test and had given presentations about the test at different conferences. However, her testimony lacked any detail about specifically what her presentations and publications discussed about the PPG test.

The court erred finding there was standard application based on Gottfried’s testimony. While Gottfried testified that PPG testing was being used in over fifty labs across the country, she specifically admitted that standardization was a problem that had not been resolved. Her testimony regarding Williford’s test reflected those very problems as she admitted that Williford was given the entire RCV set although his offending pattern was against adult women and did not include

³ Gottfried mentioned a peer reviewed paper published in Nature on June 8, 2021. She stated that the paper “noted that the PPG may be useful as a non-invasive potential technique to evaluate penile erection in men’s health.” R. 37, ll. 1-11.

children. Gottfried said that she has recently begun tailoring the tests for each examinee, which demonstrated that even her lab lacked sufficient standardization regarding how the test was administered.

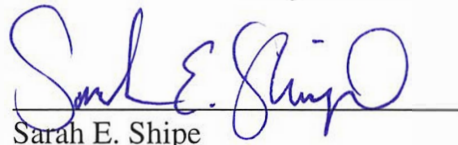
The court erred finding that the standard for quality control procedures was met. Gottfried's testimony about quality control procedures was sparse and mainly revolved around the procedures used at the MUSC lab but again she was unable to testify regarding how the test is administered in other labs around the country.

"[I]f the evidence is admissible under Rule 702, SCRE, the trial judge should determine if its probative value is outweighed by its prejudicial effect. Rule 403, SCRE. Once the evidence is admitted under these standards, the jury may give it such weight as it deems appropriate." *Council* at 20-21; 515 S.E.2d 518 (1999).

Any probative value of the PPG test was substantially outweighed by its prejudicial effect. Williford had a bench trial, however, that does not significantly lessen the prejudicial effect of Gottfried's testimony about the PPG test chiefly, the prejudicial effect of the results. Williford was given the entire RCV set although his offending pattern is not against children. The results from Williford's test showed that he had a response to stimuli involving young children. This is greatly prejudicial, even to the court. This Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's commitment and grant him a new trial.



Sarah E. Shipe
Appellate Defender

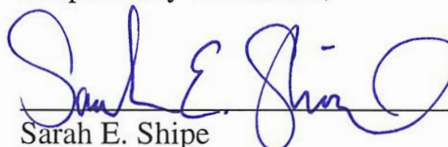
ATTORNEY FOR APPELLANT

This 29th day of July, 2022.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Final Brief of Appellant complies to the best of my ability 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."

Respectfully Submitted,



Sarah E. Shipe
Appellate Defender

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

This 29th day of July, 2022.

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

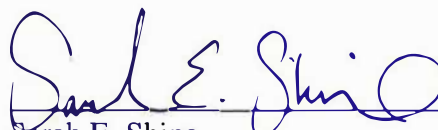
IN THE MATTER OF THE CARE AND
TREATMENT OF JAMES L. WILLIFORD,

APPELLANT.

APPELLATE CASE NO. 2021-000733

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 e-mail address listed in the Attorney Information System (AIS), this 29th day of July, 2022.


Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County
The Honorable R. Scott Sprouse, Circuit Court Judge
Appellate Case No. 2021-000249

In the Matter of the Care and Treatment
of James L. Williford,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
S.C. Bar No. 5098

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

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STATEMENT OF THE CASE

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

STATEMENT OF FACTS

In February 2003, Appellant James L. Williford pled guilty to one count of assault and battery with intent to kill and two counts of criminal sexual conduct, first degree, arising from the sexual assaults of two adult female victims, and sentenced to twenty years incarceration. Prior to Appellant's release from incarceration, Respondent State of South Carolina initiated a civil action pursuant to the South Carolina Sexually Violent Predator Act (SVPA), seeking Appellant's civil commitment for long term control, care and treatment as a sexually violent predator. The matter was called for a bench trial on June 14, 2021, before the Honorable R. Scott Sprouse, Circuit Court Judge.

Prior to trial, Appellant moved to exclude all testimony regarding a penile plethysmograph (PPG) administered to him during an evaluation by Emily Gottfried, Psy.D, of the Medical University of South Carolina (MUSC). Appellant argued there was no standardization related to the PPG, there was no adequate publication or peer review, there were no quality controls in place to ensure reliability, and there was no margin of error that could be measured. In response, the State proffered testimony from Dr. Gottfried. (Trial Transcript [TT], pp. 21-30, Motion to Suppress, State's Return to Respondent's Motion to Suppress; Record on Appeal [R.], pp. 21-30; 253-266).

Dr. Gottfried was qualified as an expert in forensic psychology by stipulation. She testified she is an assistant professor of psychiatry and behavioral sciences at the Medical University of South Carolina (MUSC) and serves as the director of MUSC's Sexual Behaviors Clinic and Lab (SBCL). Her duties include conducting forensic evaluations, overseeing treatment, and teaching and supervising medical students, psychiatry residents, forensic fellows and an assortment of students. (TT, p. 33; R., p.33).

Dr. Gottfried is a clinical member of the Association for the Treatment of Sexual Abusers (ATSA), which is a national organization dealing with the type of work performed at the SBCL, and she sits on the executive committee of the South Carolina ATSA Chapter. She also serves on the executive committee of the American Psychological Association (APA) Division 41, which is the American Psychology and Law Society, as well as the executive committee of the APA Division 12, which deals with clinical psychology assessment. She is also a member of the American Academy of Forensic Sciences, and other similar organizations, and is a member of the International Standardization Committee for the PPG. (TT, pp. 31-32; R., pp. 31-32).

Dr. Gottfried testified she had published twenty-six peer reviewed articles, written six book chapters, and given peer reviewed PPG specific presentations and lectures at numerous professional conferences in the United States and Canada. In 2019, she joined with colleagues from the United States, Canada and the United Kingdom to publish a paper in Behavioral Sciences and the Law regarding the use of the PPG in courts across those countries. She stated she has requested approximately forty-two PPGs over the course of her career, with thirty-one specific to sexually violent predator cases. (TT, pp. 32-33; R., pp. 32-33).

Dr. Gottfried became involved in the instant case after the State requested that the SBCL conduct an independent pre-commitment evaluation of Appellant. Consistent with the best practices in the field, the SBCL evaluation includes reviewing data from multiple sources and multiple methods of testing to look for general psychopathologies, symptoms of mental illnesses, personality disorders, and sexual arousal. They then assess the data gathered in multiple ways. The standard protocol used by the SBCL consists of: 1) a thorough review of all available collateral records; 2) an assessment of general psychopathology, personality functions, substance use, sexual functions and sexual history; 3) an assessment of sexual arousal; 4) scoring several risk instruments

that look at risk factors from the scientific literature; and 5) conducting an extensive clinical interview with the person. (TT, p. 34; R., p. 34).

Dr. Gottfried testified she is trained on the PPG and is a licensed and certified clinical analyst. The SCBL has been certified by Limestone Technologies (which manufactures the PPG machine used at the SBCL) as both a clinical and research laboratory. She stated the research certification is the highest level possible. (TT, pp. 43-45; R., pp. 43-45).

The PPG is part of the SBCL's standard protocol because it provides another data point, and sexual arousals due to nonconsensual or abusive stimuli provides a strong predictor of future sexual recidivism. The research also shows the individuals being evaluated pursuant to a sexual predator act have reasonable motivation to not be very forthcoming about their sexual arousals, and the PPG provides a data point regarding sexual arousal patterns, which the SBCL uses in combination with the person's self-report and the results of other tests. (TT, pp. 35-36; R., pp. 35-36).

The PPG has been peer reviewed and approximately 100 publications specific to abusive or illegal sexual behaviors have discussed use of the PPG. The PPG is also discussed in the general sexual behavior literature, looking at things like erectile dysfunction, sexual health and wellness. Dr. Gottfried testified a peer review paper published on June 8, 2021, in the general sexual behavior literature section of Nature, which "is a really, really high impact factor journal," found the PPG "may be useful as a non-invasive potential technique to evaluate penile erection in men's health," and it "can actually be applied to clinical penile hardness and erectile function assessments." (TT, pp. 36-37; R., pp.36-37).

Dr. Gottfried testified the SBCL has multiple quality controls for the PPG testing. Everyone in the SBCL is certified by Limestone to do their parts of the test, including

administration of the test and interpretation of the data. They use a new gauge for each test, and the gauge is calibrated on a five-step program before a test can even begin. They also use countermeasures to make sure the test administration is reliable, and each test is conducted in the same way for every examinee. They do a sound check, and constantly monitor the temperature and humidity in the test room. There are standardized instructions in a ten page document with a numbered checklist that the person administering the test goes over with each examinee. (TT, pp. 39-40; R., pp. 39-40).

The equipment is also set-up to detect when the examinee is trying to manipulate the results of the test. The examinee may move around or squirm in the seat, try to have an erection to something he is not aroused to by flexing, or hold his breath. One countermeasure is the pad the examinee sits on during the test picks up movements, and another is a respiration strap which indicates any irregularities in breathing. There is also a keypad on the examinee's chair, and the examinee is instructed to press it if a scenario becomes either violent or sexual, which demonstrates whether the examinee is actually paying attention during the test. The examinee may be asked to briefly describe a scenario, which is also designed to measure the examinee's attention to the test. (TT, pp. 40-41; R., pp. 40-41).

The SBCL uses a very conservative cut score (change in penile circumference) to determine whether results are significant or not significant. Studies have shown that anything under ten percent of a full erection (2.5 mm) from baseline is not a valid way to score the test, and the SBCL uses a cut score of five, in part to avoid false positive results.¹ Dr. Gottfried testified

¹Dr. Gottfried testified the cut scores are an area the Committee on Standardization is considering, and different scores may be used depending on what the PPG is being used for. Another standardization issue is the fact that other countries are allowed to use child pornography in a PPG test, but the United States does not use child pornography. Through the Committee's

using a high cut score may lead to missing some people (false negatives), but in high stakes evaluations such as those pursuant to the SVPA, they do not want to say an examinee is aroused by something when he is not. She also reiterated the PPG is only one data point considered in SBCL evaluations. (TT, pp. 41-42; R., pp. 41-42).

Dr. Gottfried testified the ATSA practice guidelines for assessment, treatment and management of male sex offenders, published in 2014, recognize the PPG as a useful tool in both assessment and treatment of adult men because it provides a means to obtain objective behavioral data that may not be readily established through other assessment means, and to explore the reliability of an examinee's self-report. The guidelines also stress the PPG should not be used as the sole criterion for any decisions regarding an examinee, and it would be unethical to use it as the sole data point or to say that a person was guilty of a crime. (TT, pp. 43-45; R., pp. 43-45).

Dr. Gottfried stated the Diagnostic and Statistical Manual of Mental Disorders, Fifth Ed. (DSM-5), also recognizes the PPG can be used to compare the person's normal sexual interests to paraphilic interests. The DSM-5 further states the PPG is "[t]he most thoroughly researched and longest used" psychophysiological measure of sexual interests, "although the sensitivity and specificity of diagnosis may vary from one site to another." (TT, pp. 45-47; R., pp. 45-47).

Dr. Gottfried testified that a book published in 2019, Sexually Violent Predators Clinical Science Handbook, has a chapter (Chapter 15) entitled "The Use of Penile Plethysmography in SVP Assessment and Treatment Decision Making," which states the use of the PPG is important in both evaluating and treating sex offenders being considered for civil commitment under sexual predator laws because research has found the identification of deviant sexual arousal is a

work, other countries have started using some of the stimuli currently used throughout the U.S., but they continue to use child pornography as well. (TT, pp. 42-43; R., pp. 42-43).

significant predictor of sexual recidivism. She further testified the PPG is generally accepted in the mental health community as evidenced by the literature from ATSA, the DSM-V, FDA approval of the Limestone hardware system, which the SBCL uses, and recognition of the PPG as a medical test by the Federal Drug Administration, Medicare and Blue Cross/Blue Shield. (TT, pp. 48-50; R., pp. 48-50).

Dr. Gottfried acknowledged there are criticisms of the PPG regarding standardization, offenders who do not show expected arousal patterns, and consistency with self-reported arousal patterns. She testified that the 2019 book included data from fifty-three studies and almost 9500 men, and it addressed many of the standardization issues, including the type of stimuli used, interpretations using standardized scores, and whether predictive effect sizes were strong or stronger than most risk factors for sexual recidivism. (TT, pp. 50-52; R., pp. 50-52).

Dr. Gottfried then explained that “sensitivity is true positive,” such as “someone is aroused by children and the PPG shows that they are aroused by children,” which is a “true positive.” “Specificity is a true negative, where the person is not aroused by children and the PPG shows that they are not aroused.” Dr. Gottfried explained that the SCBL uses the conservative cut score, which may result in more false negatives, rather than risking false positives in a high stakes evaluation. (TT, pp. 52-54; R., pp. 52-54).

The SBCL uses two stimuli sets, the Marshall set, which is older and consists of audio only, and the Real Child Voices (RCV) set. RCV, which consists of slides plus audio. The RCV set is standard on all Limestone Technology PPG hardware, and at least fifty labs across the country use it, including sexual predator programs in Minnesota, California, New York, Illinois and Missouri. Dr. Gottfried testified the 2019 meta-analysis found the slide plus audio was the preferred and most valid way to administer a PPG, and the RCV set has been studied and been the

subject of peer reviewed presentations at multiple scientific conferences. (TT, pp. 54- 58; R., pp. 54-58).

The SBCL saw Appellant twice in February 2020, and completed the evaluation in April 2020 after COVID related delays. Appellant consented to the evaluation, including the PPG. On psychological tests, Appellant's results indicated defensiveness or deception, he denied all his sexual offenses, including the ones he pled guilty to, and denied any sexual arousal. He also provided inconsistent information between the SBCL and DMH evaluations, as well as between the days of the SBCL evaluation. (TT, pp. 59-61; R., pp.59-61).

On cross-examination, Dr. Gottfried testified there were multiple studies looking at the specificity and sensitivity of the PPG, which dealt with false negatives and false positives, and established the margin of error for the PPG. She stated any test can theoretically be manipulated, and the SBCL uses a conservative cut score to minimize the possibility of false positive results. (TT, pp. 73-77; R., pp. 73-77).

The circuit court found the PPG evidence was admissible under the factors outlined for scientific evidence in case law. Specifically, the court found Dr. Gottfried's testimony established the PPG was subject to peer review, the subject of numerous publications, and recognized in the DSM-5. (TT, pp. 89-91; R., pp. 89-91).

The court further found the PPG is used in over fifty labs in various parts of the country. The court acknowledged there are different standards between the United States and other countries, but there is standard application in the United States. (TT, pp. 90-91; R., pp. 90-91).

As to quality control procedures, the court found the SBCL uses various methods to determine an appropriate baseline for the test, and uses a conservative threshold of arousal. Dr.

Gottfried gave a detailed explanation of how the baseline is established and the test procedure. (TT, p. 91; R., p. 91).

The court found the testimony indicated the RCV set is standard and provided by the manufacturer, the SBCL use standard instructions provided by the manufacturer, and there are methods in place to prevent test manipulation. The court also noted Dr. Gottfried testified the PPG is only one data point considered, and it does not preclude other considerations. (TT, pp. 91-92; R., pp. 91-92).

Finally, the court found that many of Appellant's arguments regarding the PPG went to the weight of the testimony, not admissibility. The court noted the ruling was without prejudice to Appellant's ability to challenge the weight and sufficiency of the evidence. (TT, p. 92; R., p. 92).

Before the jury, Dr. Gottfried was qualified as an expert in forensic psychology. She testified regarding Appellant's evaluation process, including the tests administered and what she considered in reaching her conclusions. She reviewed Appellant's criminal history, including his qualifying convictions under the SVPA, and stated his scores on actuarial risk assessment tools were in the well above average risk to reoffend category. In addition, Appellant exhibited several dynamic risk factors for reoffending not considered in the actuarial risk assessments. (TT, pp. 92-134; R., pp. 92-134).

Dr. Gottfried diagnosed Appellant with antisocial personality disorder, narcissistic personality disorder and paraphilic coercive disorder. She testified that the combination of Appellant's personality disorders and paraphilic disorder "significantly increase his risk for future sexual violence." She opined to a reasonable degree of psychological certainty that Appellant has serious difficulty controlling his propensity to commit sexually violent offenses, and poses a

danger to the health and safety of others if not committed for long term control, care and treatment. (TT, pp. 134-144; R., pp. 134-144).

Appellant presented testimony from Rozanna Tross, Psy.D., who evaluated him as the court appointed evaluator when she worked for DMH. She ascribed Appellant's criminal behavior to his early lifestyle and upbringing, rather than a personality disorder or mental abnormality. She concurred with Dr. Gottfried's testimony that Appellant scored in the well above average risk to reoffend category on the actuarial risk assessment tools, as well as Appellant's defensiveness, his minimization of his level of responsibility, and his dynamic risk factors. Dr. Tross opined Appellant did not have any personality disorders or mental abnormalities that would qualify him for commitment under the SVPA. (TT, pp. 170-227; R., pp.170-227).

The circuit court found the State had proven beyond a reasonable doubt that Appellant is a sexually violent predator, and ordered that he be committed to DMH for long term control, care and treatment. (Order of Commitment filed June 25, 2021; R., p. 283). 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). Appellate courts are bound by fact findings in response to pre-trial motions regarding the admissibility of evidence when the findings are supported by the evidence and not clearly wrong or controlled by error of law. State v. Miller, 375 S.C. 370, 652 S.E.2d 444, 448 (Ct. App. 2007).

“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).

ARGUMENT

The circuit court did not abuse its discretion in admitting evidence regarding a penile plethysmograph test performed by the State's expert, which she used as one factor 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 interest.

Citing dicta from In re Bilton, 432, S.C. 157, 851 S.E.2d 442 (Ct. App. 2020), Appellant contends the circuit court erred in admitting Dr. Gottfried's testimony regarding the PPG conducted as part of the comprehensive psychosexual evaluation of Appellant's mental status and risk to reoffend. In addition to relying on dicta from Bilton, Appellant's contention is premised

on an extremely truncated and misleading version of Dr. Gottfried's testimony regarding the PPG (which was virtually undisputed).²

The SVPA created a non-punitive, civil process for the commitment and treatment of sexually violent predators. In re Care & Treatment of Canupp, 380 S.C. 611, 671 S.E.2d 614, 617 (Ct. App. 2008) (*citing* In re Matthews, 345 S.C. 638, 550 S.E.2d 311, 316 [2001] [the United States Supreme Court deemed Kansas' Sexually Violent Predator Act, on which the South Carolina Act is modeled, to be a civil, non-punitive scheme]); In re Care and Treatment of Brown v. State, 372 S.C. 611, 643 S.E.2d 118, 121 (Ct. App. 2007). "The Act is designed 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." Brown, 643 S.E.2d at 621 (*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]).

Rule 702, SCRE, provides that expert opinion testimony is admissible if it will assist the trier of fact to understand evidence or determine a fact in issue. Rule 703, SCRE, provides that facts or data on which an expert bases an opinion or inference perceived by or made known to the expert need not be otherwise admissible in evidence if the facts or data are of a type reasonably relied on by experts in the particular field.

²The parsing of Dr. Gottfried's testimony is demonstrated by Appellant's frequent citation to only two to five lines out of an entire page of testimony, with no context at all. Understanding the context and meaning of Dr. Gottfried's testimony about a complex scientific process, how it is used, and any on-going issues regarding standardization, requires consideration of testimony beyond the limited parts cited by Appellant is required.

In determining the admissibility of scientific evidence, the court must consider several factors, including: (1) publications and peer review regarding 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. State v. Council, 335 S.C. 1, 515 S.E.2d 508, 517-518 (1999).

In this case, the circuit court heard extensive, undisputed testimony from Dr. Gottfried regarding the reliability of the PPG, including her first-hand experience and certifications with the PPG, research studies and publications concluding the PPG is reliable and a valuable tool in sex offender evaluations and treatment, as well as how Appellant's PPG test results were relevant to Dr. Gottfried's ultimate opinion. Based on the evidence, the court then made findings as to each of the requirements for admission of scientific evidence, which are amply supported by the record.

A. Publications and Peer Review of the Technique

Dr. Gottfried has extensive first-hand experience with the PPG, and is certified to administer PPG tests, and read and interpret PPG results. She supervises a department at MUSC that includes a PPG lab with the highest possible certifications and highly trained personnel to operate the PPG machine and software. She is involved in national and international organizations regarding behavioral sciences, and sits on a committee working to establish international standards for administering and interpreting PPG results. She testified the PPG has been the subject of numerous peer reviewed articles, book chapters and conference presentations, including an article published approximately one week before the trial in this case. In addition, Dr. Gottfried was

personally involved in authoring and/or presenting some of the peer reviewed literature, and she presented at professional conferences about use of the PPG in sex offender evaluations. (TT, pp. 30-37; R., pp. 30-37).

Dr. Gottfried further testified the DSM-5 recognizes the PPG as the most thoroughly researched and longest used objective measure of sexual attraction to children, and ATSA's practice guidelines recognize the PPG as a means to obtain objective behavioral data not readily established with other assessment means. (TT, pp. 43-47; R., pp. 43-47). In addition, the 2019 book chapter she referenced included an extensive meta-analysis of studies involving thousands of male sex offenders, and concluded the PPG is important in both evaluating and treating sex offenders being considered for civil commitment under sexual predator laws because research has found the identification of deviant sexual arousal is a significant predictor of sexual recidivism. (TT, p. 49; R., p. 49).

Appellant dismisses the June 2021 Nature article as "not relevant to [the PPG's] use in this case." The fallacy in Appellant's dismissiveness is it assumes evidence reflecting the PPG's reliability and validity is relevant only if it relates to sexual predator proceedings. As Dr. Gottfried testified, the PPG is used in the general male sexual health arena for things such as erectile dysfunction, sexual health and wellness. (TT, pp. 36-37; R., pp. 36-37). Literature discussing the PPG's reliability in medical evaluations and treatment unrelated to sexually violent predator evaluations is clearly relevant and important to the court's consideration of admissibility.

B. Prior Application of the Method Involved

Dr. Gottfried testified about the science involved in a PPG test, including how the PPG works, what it is intended to measure, and how it is conducted. She candidly acknowledged certain standardization issues remain, particularly internationally, but testified the PPG is now recognized

in the DSM-5 as the most thoroughly researched and **longest used** psychophysiological measures of sexual interests, and ATSA includes the PPG in its standard guidelines for sex offender evaluations. In addition, the 2019 book chapter considered studies involving thousands of cases in which the PPG was used. (TT, pp. 39-52; R., pp. 39-52). Clearly, the evidence showed the PPG has been used and studied numerous times.

The circuit court specifically found the PPG is used in over fifty labs across the country, and the testimony indicated there was standard applications used in those labs. (TT, pp. 90-91; R., pp. 90-91. Dr. Gottfried's undisputed testimony amply supported the circuit court's findings as to this factor.

C. Quality Control Procedures

Dr. Gottfried testified the MUSC PPG lab uses multiple quality control measures. All lab personnel are trained and certified by the machine manufacturer, and are credentialed to perform their part of the tests. Each gauge is calibrated multiple times using the same method, and the machine software does not allow a test to begin until the gauge is properly calibrated. There are countermeasures to ensure everything is reliable and performed in the same way, including sound checks to make sure all the sound equipment is working properly, and the humidity and temperature inside the lab is controlled. The lab uses standardized instructions from the manufacturer for every PPG test it conducts, and every step in the process from administration to analysis is performed in the same standardized way. In addition, the SBCL uses a conservative cut score to minimize the risk of a false positive result. (TT, pp. 39-41; R., pp. 39-41).

Appellant claims Dr. Gottfried's testimony regarding quality control was "sparse and mainly revolved around the procedures used at the MUSC lab," but she "was unable to testify regarding how the test is administered in other labs around the country." To the contrary, Dr.

Gottfried's testimony on this issue was very detailed rather than "sparse," and it is understandable why she gave details regarding the SBCL's PPG administration because she is in charge of the lab and is certified on every step of the process. She testified the Limestone Technologies PPG system used in the SBCL is currently used by between fifty to one hundred labs across the country, and the system is sold with the same standardized instructions on quality control and use. Dr. Gottfried could no more testify regarding the procedures actually used in other unidentified labs than a DNA expert could testify regarding actual procedures used in other unidentified DNA labs.

D. Consistency of the Method with Recognized Scientific Laws and Procedures

Dr. Gottfried testified about the physiological responses the PPG is designed to measure, how the PPG machine and software measures those responses, and multiple labs across the country and internationally use standard PPG equipment and stimuli. In addition, to recognition by the DSM-5 and ATSA, Dr. Gottfried testified the PPG is recognized as a valid medical test by the federal Food and Drug Administration, Medicare and major insurance companies such as Blue Cross/Blue Shield. She stated studies involving the PPG's specificity and sensitivity (false negatives and false positives) have determined the PPG's margin of error, and many such studies have concluded the PPG is a valuable tool in the assessment and treatment of general male sexual health as well as sex offenders. (TT, pp. 41-58, 73-77; R., pp. 41-58; 73-77). *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 "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."); *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 “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 is “[p]erhaps the best means of objectively measuring deviant sexual interest”, and although it is not universally embraced, “there nonetheless remains widespread acceptance and recognition of the value of phallometric assessment”) (emphasis added); Dean Tong, 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.”); James M. Peters, Assessment and Treatment of Sex Offenders: What Attorneys Need to Know, Advocate, 23 (Dec. 1999) (PPG “is invaluable in the evaluation, treatment and management of known sexual offenders.”).

In the face of mere conclusory assertions regarding purported deficiencies in Dr. Gottfried’s testimony, Appellant’s only specific contention is his PPG test was unreliable because it included all the RCV stimulus sets, including sets that did not reflect the type of victim Appellant offended against in his sexual offenses, and Dr. Gottfried testified she now tailors the stimulus sets used in a particular PPG to focus on specific victim types based on the offender’s offense history. He asserts this somehow exemplifies PPG standardization problems and renders the PPG

unreliable, an assertion that is a red herring attempting to distract from the entirety of Dr. Gottfried's testimony and create a problem totally unrelated to her testimony.

The on-going standardization issues Dr. Gottfried acknowledged and discussed were primarily international differences particularly regarding the use of child pornography as a stimulus set during the test. The fact that a particular PPG may include all of the available stimulus sets rather than only some of the sets has nothing to do with the overall reliability of the PPG as a recognized and accepted test. A medical doctor may order blood tests for a patient that are tailored to look for certain results and not others, but that does not render the blood tests unreliable.³

Notwithstanding the dicta in Bilton claiming near uniformity of other jurisdictions excluding the PPG, courts, including South Carolina circuit courts,⁴ have recognized the general acceptance and admissibility of the PPG in sexually violent predator cases. In In re Detention of Halgren, 156 Wash. 2d, 132 P.3d 714 (2006), the Washington Supreme Court found PPG results were admissible as part of the diagnostic process, and the PPG testimony would assist the jury in understanding the expert's sexual deviancy diagnosis. *Id.* at 719. The court further found the issue of the PPG's reliability goes to the weight of the evidence rather than its admissibility *Id.*; *see also* In re Detention of Herrick, 198 Wash. App. 439, 393 P.3d 879, 885 (2017), *aff'd*, 190 Wash. 2d 236, 412 P.3d 293 (2018)(same).⁵

³Logically, any test focused on certain known factors arguably takes less time and is more reliable than a broad test including factors that may be unrelated to the person being tested, but even if true, that does not render the broader test unreliable.

⁴In re Ronald MJ Gregg, 2018-CP-10-03472 (Jefferson, J.); In re Shawn Torlif Daily, 2019-CP-42-03230 (Kelly, J.); In re James Lewis Williford, 2019-CP-04-01380 (Sprouse, J.); In re Andy Eugene Hyman, 2020-21-01045 (Henderson, J.); In re Wiley L. Chapman, 2020-CP-13-00764 (Holt, J.). The PPG evidence has been excluded in three cases.

⁵Significantly, Washington's sexual predator statute expressly gives the courts the discretion to order the person to comply with a PPG if requested by the evaluator. 412 P.3d at 295-296; RCW §71.09.050(1). Thus, the Washington legislature recognized the PPG was a valuable tool evaluators should be able to use if necessary.

The Illinois appellate court also found PPG 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 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. Acknowledging some experts have criticized and 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).

Finally, Appellant asserts the prejudicial effect of the PPG evidence substantially outweighed the evidence’s probative value, particularly as it related to his responses to RCV stimulus sets involving children, which was outside his offending pattern, and therefore, it should have been precluded pursuant to Rule 403, SCRE. As a threshold matter, the first reference to

Appellant's arousal to the child stimulus sets was in response to a question Appellant asked during cross-examination in the pre-trial hearing, Dr. Gottfried's response was brief, and she specifically stated she essentially discounted those results because nothing in Appellant's history indicated a pedophilic disorder. (TT, pp. 70-72; R., pp.70-72). Then, during her trial testimony, Dr. Gottfried merely listed the names of the stimulus sets he responded to, and then stated most of the scenarios she considered clinically significant for Appellant "were to coercion or sexual violence, which is consistent with the reported offense behaviors."⁶ (TT, pp. 122-123; R., p. 122-123).

Appellant concedes his trial was a bench trial, but contends the PPG evidence was "greatly prejudicial, even to the court." "It is well-established that it is a near insurmountable burden for a defendant to prove prejudice in the context of a bench trial as a judge is presumed to disregard prejudicial or inadmissible evidence." State v. Inman, 395 S.C. 539, 720 S.E.2d 31, 45 (2011) (citing People v. Jackson, 949 N.E.2d 215, 229 [2011][the danger of prejudice is lessened in a bench trial]). While the PPG evidence in this case was prejudicial to Appellant, that prejudice did not outweigh the highly probative value of it in light of the issues of mental status and risk to reoffend that the circuit court was called upon to decide in this case.

When Dr. Gottfried's undisputed testimony is considered as a whole, it amply supports the circuit court's findings regarding the reliability of the PPG and its admissibility as evidence. Accordingly, the circuit court's ruling and Appellant's commitment as a sexually violent predator should be affirmed.

⁶The sets Appellant showed clinically significant arousal to were "coercion of a female child, violence against a female child, female infant, coercion or rape of an adult woman." (TT, pp. 122-123; R., pp. 122-123).

CONCLUSION

Based on the foregoing reasons, the State respectfully submits the Court should affirm the circuit court's admission of the PPG evidence, its ultimate finding Appellant is a sexually violent predator as defined by the SVPA, and the order committing Appellant to DMH for long term control, care and treatment.

Respectfully submitted,

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
S.C. Bar No. 5098

BY:



Deborah R.J. Shupe

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

July 26, 2022

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County
The Honorable R. Scott Sprouse, Circuit Court Judge
Appellate Case No. 2021-000249

In the Matter of the Care and Treatment
of James L. Williford,

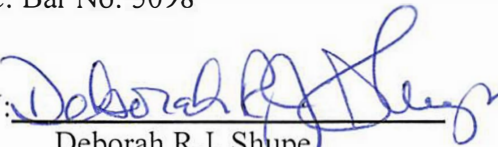
Appellant.

CERTIFICATE OF COUNSEL

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."

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
S.C. Bar No. 5098

BY: 
Deborah R.J. Shupe

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

July 26, 2022

App'x328

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County
The Honorable R. Scott Sprouse, Circuit Court Judge
Appellate Case No. 2021-000249

In the Matter of the Care and Treatment
of James L. Williford,

Appellant.

PROOF OF SERVICE

I, Caroline Collins, certify I served the within Final Brief of Respondent on Appellant by email to the address reflected in the AIS system, and by depositing a copy in the United States mail, postage prepaid, addressed to:

Sarah E. Shipe
Assistant Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

The Final Brief 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 27th day of July, 2022.



Caroline Collins
Administrative Coordinator

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29402
(803) 734-3727

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

In the Matter of the Care and Treatment of James Lewis
Williford, Appellant.

Appellate Case No. 2021-000733

Appeal From Anderson County
R. Scott Sprouse, Circuit Court Judge

Unpublished Opinion No. 2024-UP-270
Submitted July 19, 2024 – Filed July 24, 2024

REVERSED AND REMANDED

Appellate Defender Sarah Elizabeth Shipe, of Columbia,
for Appellant.

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

PER CURIAM: James Lewis Williford appeals his involuntary commitment under the Sexually Violent Predator Act (the SVP Act).¹ On appeal, Williford argues the trial court erred by admitting testimony regarding the results of his penile plethysmography (PPG). Specifically, Williford argues the PPG he underwent did not meet the requirements of admissibility for scientific evidence

¹ S.C. Code Ann. §§ 44-48-10 to 44-48-180 (2018 & Supp. 2023).

pursuant to Rule 702 of the South Carolina Rules of Evidence because the test lacked (1) standardization; (2) adequate publication and peer review; (3) quality control procedures to ensure reliability; and (4) a calculation of margin of error. We reverse and remand pursuant to Rule 220(b), SCACR.

We hold the PPG is not reliable as required by Rule 702, SCRE; thus, the trial court abused its discretion in admitting the PPG results. *See State v. Jackson*, 384 S.C. 29, 34, 681 S.E.2d 17, 19 (Ct. App. 2009) ("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."); *In re Gonzalez*, 409 S.C. 621, 628, 763 S.E.2d 210, 213 (2014) ("An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." (quoting *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000))); Rule 702, SCRE ("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."); *State v. Wallace*, 440 S.C. 537, 544, 892 S.E.2d 310, 313 (2023) ("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.'" (quoting *State v. Council*, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999))); *Watson v. Ford Motor Co.*, 389 S.C. 434, 450, 699 S.E.2d 169, 177 (2010) ("[F]actors that the trial court should consider when determining . . . reliab[ility] are: '(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.'" (footnote omitted) (quoting *Council*, 335 S.C. at 19, 515 S.E.2d at 517)); *Matter of Daily*, Op. No. 6061 (S.C. Ct. App. filed June 12, 2024) (Howard Adv. Sh. No. 22 at 19) (holding the trial court abused its discretion in admitting the PPG test results because "the PPG is not reliable, as required by Rule 702"); *see also Matter of Bilton*, 432 S.C. 157, 162, 851 S.E.2d 442, 444 (Ct. App. 2020) ("The [PPG] test is controversial and has been criticized for a lack of standardization and for being subject to manipulation."); *id.* at 162-63, 851 S.E.2d at 444 ("[W]ith 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.'" (quoting *Doe ex rel. Rudy-Glanzer v. Glanzer*, 232 F.3d 1258, 1266 (9th Cir. 2000))).

Further, we cannot say that the error of admitting the results of the PPG test could not have reasonably affected the result of the bench trial. *See Bilton*, 432 S.C. at 167, 851 S.E.2d at 447 ("As with any improper evidence, the next step is to determine whether the erroneous admission qualifies as a harmless error."); *id.* ("We do not weigh the evidence when determining this. Instead, we ask 'whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict.'" (quoting *State v. Tapp*, 398 S.C. 376, 389-90, 728 S.E.2d 468, 475 (2012))); *id.* at 168, 851 S.E.2d at 447 (finding prejudicial error in the admission of PPG test results). During the 2021 trial, the trial court heard competing testimony from the two expert witnesses who had evaluated Williford pursuant to the SVP Act. The State's expert and sole witness, Dr. Emily Gottfried, diagnosed Williford with two personality disorders and a mental abnormality and opined he was likely to reoffend. Williford's expert, Dr. Rozanna Tross, found no personality disorders or mental abnormalities. Although Dr. Gottfried stated the PPG was "one data point in [the] protocol," she described the PPG as "a physiological objective measure of male sexual arousal," and explained "that sexual arousals due to nonconsensual or abusive stimuli is a strong predictor of future sexual recidivism." She later specified that for Williford, most of the scenarios of the PPG that she attributed "clinically significant arousal to were to coercion or sexual violence." Dr. Gottfried further underscored the importance of the PPG in her evaluations when Williford's counsel asked Dr. Gottfried whether she could do an evaluation if she were told she could not use the PPG. Dr. Gottfried responded, "No. I mean I developed the protocol as the director of the clinic and lab, so I wouldn't take it out." She further explained that if she was not allowed to use the PPG as testimony in court, "[her] plan, if that were to happen, is to still administer a PPG and still use that as a data point." Additional testimony revealed Williford had a disciplinary infraction for slapping another inmate in 2004 but no subsequent infractions in the intervening years. When Williford's counsel posed the question that "there [was] nothing that has occurred [in the last seventeen years] that would indicate he hasn't changed; is that correct," Dr. Gottfried further emphasized use of the PPG in her considerations. Although she allowed that some of Williford's aggressiveness and fighting "ha[d] remitted," she explained that otherwise there was not any change in the data; Williford had not undergone any treatment, he did not believe he needed treatment, he showed current arousal to coercive sexual acts, and still demonstrated the same personality characteristics he demonstrated at the time of his offenses. Based on Dr. Gottfried's reliance on the PPG and her testimony emphasizing the importance of the PPG, we cannot say beyond a reasonable doubt that the admission of the results of the PPG did not contribute to the guilty verdict.

REVERSED AND REMANDED.²

WILLIAMS, C.J., and KONDUROS and TURNER, JJ., concur.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County
The Honorable R. Scott Sprouse, Circuit Court Judge
Appellate Case No. 2021-000733

IN THE MATTER OF THE CARE AND TREATMENT
OF JAMES LEWIS WILLIFORD,

APPELLANT

RESPONDENT'S PETITION FOR REHEARING

On July 24, 2024, this 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. Matter of Williford, Op. No. 2024-UP-270 (S.C. Ct. App. filed June 24, 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. Scott Sprouse 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 Sprouse’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, which the State disputes, 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

¹The court decided this case without oral argument, during which all the 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.

discretion,” and “[i]f so, we affirm”). The exercise of discretion means “the trial court—when 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).

At the time of this bench trial, there was no authority in South Carolina holding the PPG is unreliable as a matter of law. Matter of Daily, filed three years after this case was tried, was the first case in South Carolina holding that PPG evidence was unreliable. Indeed, in the only previously published case regarding PPG evidence, Matter of Bilton, 432 S.C. 157, 851 S.E.2d 442 (Ct. App. 2020), this court expressly declined to rule on the issue of PPG reliability. *Id.* at 446 (“We wish to emphasize that we are not called on to review whether some hypothetical procedure would qualify as a baseline demonstration that Bilton’s PPG test results were reliable. We simply hold, as noted above, 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.”) (emphasis added).² Thus, there was no basis for finding Judge Sprouse committed an error of law, and his factual findings and conclusions should have been analyzed for evidentiary support.³

The court reversed Judge Sprouse’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.⁴ Rather, the court summarily concluded the PPG test did not meet the requirements for admissibility of scientific evidence, citing a lack of standardization, adequate publication and peer review, quality control procedures and calculation of margin of error. These cited reasons indicate the court failed to even consider much of Dr. Gottfried’s testimony.

There was no dispute that Dr. Gottfried is an expert in forensic and clinical psychology and on the PPG. Significantly, her pre-trial testimony regarding the PPG was undisputed.

Dr. Gottfried is a clinical member of the Association for the Treatment of Sexual Abusers (ATSA), which is a national organization dealing with the type of work performed at the SBCL, and she sits on the executive committee of the South Carolina ATSA Chapter. She serves on the executive committee of the American Psychological Association (APA) Division 41, which is the American Psychology and Law Society, as well as the executive committee of the APA Division 12, which deals with clinical psychology assessment. She is a member of the American Academy

² The Bilton court’s holding that the State’s expert testimony regarding the PPG was a pipeline for scientific work performed by someone else recognized that the PPG is **scientific** work.

³To the extent the court relied on Daily in finding an error of law, Daily was decided well after the trial in this case, the State submits Daily was incorrectly decided, and a petition for rehearing is pending in that case.

⁴Indeed, it is difficult to find anything in the court’s summary opinion indicating the court even read, much less considered, Judge Sprouse’s analysis, findings and conclusions.

of Forensic Sciences, and other similar organizations, and is a member of the International Standardization Committee for the PPG. (R., pp. 31-32).

Multiple studies regarding the PPG have been peer reviewed, and approximately 100 publications specific to abusive or illegal sexual behaviors have discussed use of the PPG. The PPG is also discussed in the general sexual behavior literature, looking at things such as erectile dysfunction, sexual health and wellness. Dr. Gottfried testified a peer reviewed paper published on June 8, 2021, in the general sexual behavior literature section of Nature, which “is a really, really high impact factor journal,” found the PPG “may be useful as a non-invasive potential technique to evaluate penile erection in men’s health,” and it “can actually be applied to clinical penile hardness and erectile function assessments.” (R., pp. 36-37).

Dr. Gottfried further testified the Sexual Behaviors Clinic and Lab has multiple quality controls for the PPG testing. Everyone in the SBCL is trained and certified by Limestone (the test machine and software manufacturer) to conduct their parts of the test, including administration of the test and interpretation of the data. They use a new gauge for each test, and the gauge is calibrated on a five-step program before a test can even begin. They also use countermeasures to make sure the test administration is reliable, and each test is conducted in the same way for every examinee. They do a sound check, and constantly monitor the temperature and humidity in the test room. There are standardized instructions in a ten-page document with a numbered checklist that the person administering the test goes over with each examinee. (R., pp. 39-40).

As further quality control, the equipment is also set-up to detect when the examinee is trying to manipulate the results of the test. The examinee may move around or squirm in the seat, try to have an erection to something he is not aroused to by flexing, or hold his breath. One countermeasure is that the pad the examinee sits on during the test picks up movements, and

another is a respiration strap which indicates any irregularities in breathing. There is also a keypad on the examinee's chair, and the examinee is instructed to press it if a scenario becomes either violent or sexual, which demonstrates whether the examinee is actually paying attention during the test. The test technician may ask the examinee to briefly describe a scenario, which is also designed to measure the examinee's attention to the test. (R., pp. 40-41).

The SBCL uses a very conservative cut score (change in penile circumference) to determine whether results are significant for purposes of SVPA psychosexual evaluations, and Dr. Gottfried testified using a high cut score may lead to false negative results, but in high stakes SVPA evaluations they do not want to say an examinee is aroused by something when he is not.⁵ She also reiterated the PPG is only one data point considered in SBCL evaluations. (R., pp. 41-42).

Dr. Gottfried testified the 2014 ATSA practice guidelines for assessment, treatment and management of male sex offenders recognize the PPG as a useful tool in both assessment and treatment of adult men because it provides a means to obtain objective behavioral data that may not be readily established through other assessment means. The guidelines also stress the PPG should not be used as the sole criterion for any decisions regarding an examinee, and Dr. Gottfried testified it would be unethical to use the PPG as the sole data point or to determine a person's criminal guilt. (R., pp. 43-45).

⁵Dr. Gottfried testified the cut scores are an area the Committee on Standardization is considering, and different scores may be used depending on the purpose of the PPG (i.e., assessment, treatment, penile health issues, etc.). While evaluators may use different cut scores, the underlying data remains the same. The primary standardization issue is not related to cut scores, but arises from the fact that other countries are allowed to use child pornography in a PPG test, but the United States cannot, and does not, use child pornography. Through the Standardization committee's work, other countries now use some of the stimuli currently used throughout the United States, but they continue to use child pornography as well. (R., pp. 42-43).

Dr. Gottfried stated the Diagnostic and Statistical Manual of Mental Disorders, Fifth Ed. (DSM-5), also recognizes the PPG can be used to compare the person's normal sexual interests to paraphilic interests. The DSM-5 further states the PPG is "[t]he most thoroughly researched and longest used" psychophysiological measure of sexual interests, "although the sensitivity and specificity of diagnosis may vary from one site to another." (R., pp. 45-47).

Dr. Gottfried testified that a 2019 book, Sexually Violent Predators Clinical Science Handbook, has a chapter (Chapter 15) entitled "The Use of Penile Plethysmography in SVP Assessment and Treatment Decision Making." The author states the use of the PPG is important in both evaluating and treating sex offenders being considered for civil commitment under sexual predator laws because research has found the identification of deviant sexual arousal is a significant predictor of sexual recidivism. Dr. Gottfried further testified the PPG is generally accepted in the mental health community as evidenced by the literature from ATSA, the DSM-V, Federal Drug Administration approval of the Limestone system, which the SBCL uses, and recognition of the PPG as a valid medical test by the Federal Drug Administration, Medicare/Medicaid and Blue Cross/Blue Shield. (R., pp. 48-50).

Dr. Gottfried acknowledged there are criticisms of the PPG regarding standardization, offenders who do not show expected arousal patterns, and consistency with self-reported arousal patterns. She testified that a 2019 meta-analysis of the PPG included data from fifty-three studies and almost 9,500 men, and addressed many of the standardization issues, including the type of stimuli used, interpretations using standardized scores, and whether predictive effect sizes were strong or stronger than most risk factors for sexual recidivism. (R., pp. 50-52).

Dr. Gottfried then explained that "sensitivity is true positive," such as "someone is aroused by children and the PPG shows that they are aroused by children." "Specificity is a true negative,

where the person is not aroused by children and the PPG shows that they are not aroused.” Dr. Gottfried again explained the SCBL uses the conservative cut score, which may result in more false negatives, rather than risking false positives in a high stakes SVPA evaluation. (R., pp. 52-54).

Dr. Gottfried testified the SBCL uses two stimuli sets, the Marshall set, which is older and audio recordings only, and the Real Child Voices (RCV) set, which is slides plus audio. The RCV set is standard on all Limestone Technology PPG systems, and Dr. Gottfried testified that at least fifty labs across the country use it, including sexual predator programs in Minnesota, California, New York, Illinois and Missouri. Dr. Gottfried further testified the 2019 meta-analysis found the slide plus audio was the preferred and most valid way to administer a PPG, and the RCV set has been studied and been the subject of peer reviewed presentations at multiple scientific conferences. (R., pp. 54-58).

The SBCL saw Appellant twice in February 2020, and completed the evaluation in April 2020 after COVID related delays, and Appellant consented to the evaluation, including the PPG. Appellant’s results on psychological tests indicated defensiveness or deception. He denied committing any sexual offenses, including the ones he pled guilty to, and denied any sexual arousal. He also provided inconsistent information between the SBCL and DMH evaluations, as well as between the days of the SBCL evaluation. (R., pp. 59-61).

On cross-examination, Dr. Gottfried testified there were multiple studies looking at the specificity and sensitivity of the PPG, which dealt with false negatives and false positives, and established the margin of error for the PPG. She stated any test can theoretically be manipulated, and the SBCL uses a conservative cut score to minimize the possibility of false positive results. (R., pp. 73-77).

As noted above, the court did not discuss or analyze any of Judge Sprouse's findings and conclusions, but in a conclusory fashion, overlooked the extensive evidence before Judge Sprouse regarding the reliability of the PPG, particularly in relation to the Jones/Council factors. Apparently relying on Daily, which was not the law when this case was tried, the court implicitly concluded that Judge Sprouse erred as a matter of law in finding the PPG is reliable

It is clear from the record that Judge Sprouse 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.⁶ Rather than fully analyze the evidence and Judge Sprouse's findings, the court overlooked the evidence and findings regarding standardization, the extensive peer review of, and publications about, the PPG, the quality control measures established by the PPG manufacturer of the PPG machine used in the MUSC's SBCL, as well as at least fifty labs across the United States, and the direct testimony regarding the margin of error calculations in the published research.

Instead of applying the appropriate abuse of discretion standard of review, this court engaged in a *de novo* review and based on the Daily opinion and this court's recent, consistent negative view of the PPG test in general, substituted its judgment for Judge Sprouse's without finding abuse of discretion as to any of Judge Sprouse's findings or conclusions. An appellate court's negative view of 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)

⁶The extensive evidence before Judge Sprouse and his detailed ruling regarding admissibility of PPG evidence are set forth in detail at pages 5-10 of the Brief of Respondent with citations to the record, and are incorporated herein by reference.

(appellate courts analyze the admissibility of scientific evidence for the first time when the trial court fails to meaningfully exercise its discretion).

B. The court's harmless error analysis overlooked other overwhelming evidence that supported Judge Sprouse's bench trial verdict and mischaracterized Dr. Gottfried's testimony.

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); SCRE Rule 103(a). "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). "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).

"It is well-established that it is a near insurmountable burden for a defendant to prove prejudice in the context of a bench trial as a judge is presumed to disregard prejudicial or inadmissible evidence." State v. Inman, 395 S.C. 539, 720 S.E.2d 31, 45 (2011) (*citing* People v. Jackson, 949 N.E.2d 215, 229 [2011][the danger of prejudice is lessened in a bench trial]). While the PPG evidence in this case was prejudicial to Appellant, that prejudice did not invalidate Judge Sprouse's ultimate verdict.

As with its PPG analysis, this court set forth the correct harmless error standard, then failed to apply it to this bench trial. Rather than considering the PPG testimony in context and reviewing the case before Judge Sprouse as a whole, the court simply concluded the PPG evidence may have

contributed to Judge Sprouse's verdict, and therefore, error in admitting the PPG evidence was not harmless.⁷

In finding admission of the PPG evidence was not harmless, this court overlooked other, and indeed overwhelming, evidence in the record that more than supported Judge Sprouse's verdict, even without any of the PPG evidence. Dr. Gottfried testified about Appellant's evaluation process, including the full battery of psychological tests administered, and what she considered in reaching her conclusions. She reviewed Appellant's criminal history, including his qualifying convictions under the SVPA, and stated his scores on actuarial risk assessment tools were in the well above average risk to reoffend category. In addition, Appellant exhibited several dynamic risk factors for reoffending not considered in the actuarial risk assessments. (R., pp. 92-134).

Dr. Gottfried's testimony regarding Appellant's PPG test results was limited, and she stated the results were consistent with the pattern of Appellant's reported sex offenses. (R., pp. 122-123). Her entire trial testimony, including cross-examination and re-direct, is seventy-six pages (93-169), and the PPG test result testimony is one and one-half pages, or 2% of it. Contrary to this court's finding, this demonstrates Dr. Gottfried did not "emphasize" the importance of Appellant's PPG test results, and as she stated, the PPG was only one data point she considered in the course of her comprehensive evaluation of Appellant.

Dr. Gottfried diagnosed Appellant with antisocial personality disorder, narcissistic personality disorder and paraphilic coercive disorder. She testified that the paraphilia diagnosis was premised on the pattern of coercion and force in Appellant's sex offenses, and when that was

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.

considered with the PPG results and Appellant's personality characteristics, his paraphilia significantly increases his risk for future sexual violence. (R., pp. 134-144).

Appellant's expert ascribed Appellant's criminal behavior to his early lifestyle and upbringing rather than a personality disorder or mental abnormality. She concurred with Dr. Gottfried's testimony that Appellant scored in the well above average risk to reoffend category on the actuarial risk assessment tools, as well as Appellant's defensiveness, his minimization of his level of responsibility, and his dynamic risk factors, but opined he did not have any personality disorders or mental abnormalities that would qualify him for commitment under the SVPA. (R., pp.170-227).

Judge Sprouse heard from two experts. One expert performed a thorough and multi-faceted psychosexual evaluation. The other expert performed a less thorough evaluation, accepted Appellant's self-serving statements to her about how he had changed as true, then blamed Appellant's significant history of sexual offending on his childhood rather than a mental abnormality or personality disorder. She agreed Appellant was a high risk to reoffend sexually according to the well-established actuarial risk assessment tools, one of which she scored one point higher than Dr. Gottfried's score. On cross-examination, she also agreed, albeit reluctantly, that there was "some evidence initially that could suggest" Appellant had an interest in non-consensual sexual activity. (R., pp. 170-227). Thus, the only true disagreement between the experts was whether Appellant has a mental abnormality or personality disorder at all.

The State briefly referenced the PPG test during closing argument (R., p. 231), and focused instead on the thoroughness of Dr. Gottfried's evaluation, the pattern of coercion and force established by Appellant's sexual offenses, Appellant's statements to Dr. Gottfried, the issues the two experts agreed on, and the basis for Dr. Tross' opinion Appellant did not have either a mental

abnormality or personality disorder. (R., pp. 229-233). More significantly, Appellant's counsel argued in closing that "the big thing, Judge, in this case is whether or not there is a mental abnormality or personality disorder to begin with." (R., p. 234).

Judge Sprouse was free to accept or reject either expert's opinion on the issue of whether Appellant has a mental abnormality or personality disorder that is causally linked to his sexual offending and his propensity to reoffend sexually is to such a degree as to constitute a danger to the public. Even without the PPG evidence, the differences in thoroughness and methodology between the evaluations were stark, and Judge Sprouse could determine the experts' respective credibility and weigh their opinions accordingly. Further, the PPG results evidence was arguably cumulative to the undisputed evidence regarding the facts of Appellant's sex offense history, which was the basis for Dr. Gottfried's paraphilia diagnosis.

The court's reference to a quote from Dr. Gottfried's pre-trial testimony stating she could not do an evaluation if she could not use the PPG blurs the substance of her entire statement. The court correctly states the reason Dr. Gottfried gave for not doing an evaluation without the PPG was that it was part of the standard protocol for the SBCL, she would not take it out of that protocol, and she would still administer it and use it as a data point if she could not testify about the results in court. (R., p. 62). Contrary to the court's implication that Dr. Gottfried's statements indicated the PPG was a primary basis for her opinions in this case, however, the substance of her statements was that she would not do an evaluation without the PPG, rather than that she could not do an evaluation without it. Further, the court does not indicate how those limited statements during the pre-trial hearing obviated, or even outweighed, all the other evidence presented to Judge Sprouse during the trial regarding the basis for Dr. Gottfried's opinions.

The evidence about Appellant's PPG test results was a minimal part of Dr. Gottfried's testimony. Rather than consider that minimal testimony in context with the other evidence presented as the basis for Dr. Gottfried's opinions, and give credence to Judge Sprouse's ability to sort through all the evidence presented, this court summarily concluded the error in admitting the PPG evidence was not harmless beyond a reasonable doubt. Accordingly, the court should rehear this matter and find that any error from admission of the PPG evidence was harmless beyond a reasonable doubt.

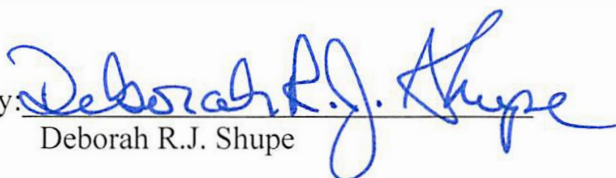
CONCLUSION

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,

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
S.C. Bar No. 5098

By: 
Deborah R.J. Shupe

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

August 12, 2024

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County
The Honorable R. Scott Sprouse, Circuit Court Judge
Appellate Case No. 2021-000733

IN THE MATTER OF THE CARE AND TREATMENT
OF JAMES LEWIS WILLIFORD,

APPELLANT

PROOF OF SERVICE

I, Abigail Hawley-Browder, 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 via ctapp@sccourt.org.

Sarah E. Shipe
Assistant Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
sshipe@sccid.sc.gov

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

This 12th day of August, 2024.


ABIGAIL HAWLEY-BROWDER
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

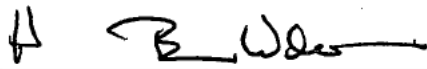
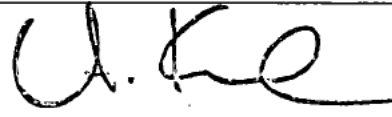
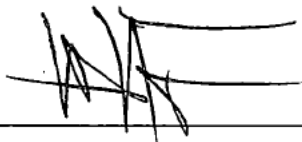
The South Carolina Court of Appeals

In the Matter of the Care and Treatment of James Lewis
Williford, Appellant.

Appellate Case No. 2021-000733

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.

	C.J.
	J.
	J.

Columbia, South Carolina

cc:

Deborah R.J. Shupe, Esquire
Alan McCrory Wilson, Esquire
Sarah Elizabeth Shipe, Esquire
The Honorable R. Scott Sprouse

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Sep 20 2024

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