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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Anderson County
The Honorable R. Scott Sprouse, Circuit Court Judge
Court of Appeals Appellate Case No. 2021-000733
Opinion No. 2024-UP-270

IN THE MATTER OF THE CARE AND TREATMENT
OF JAMES LEWIS WILLIFORD,

RESPONDENT.

**PETITIONER'S REPLY TO RETURN TO PETITION FOR
WRIT OF CERTIORARI TO THE COURT OF APPEALS**

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General

Office of the Attorney General
Post Office Box 11549 Columbia,
SC 29211
(803) 734-3727

ATTORNEYS FOR PETITIONER

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ARGUMENT

Based on an extremely truncated and misleading version of the PPG evidence presented to Judge Sprouse, Respondent contends the court of appeals properly reversed Judge Sprouse's ruling that the PPG was reliable and Respondent's commitment pursuant to the SVPA. In support of his contentions, Respondent cites very limited portions of Dr. Gottfried's testimony regarding the PPG and takes the cited testimony completely out of context.¹

By way of example, Respondent asserts Dr. Gottfried "admitted there were problems with standardization of the PPG test because it was used for different things," citing page 45, lines 8-10 as support. Dr. Gottfried's actual testimony regarding different uses of the PPG, however, was that different uses "has been an issue when we are working on the standardizations," specifically what might be considered a significant arousal for treatment versus evaluation purposes. Rather than presenting this as a standardization "problem" with the PPG, Dr. Gottfried explained why the significant arousal determination might be different for treatment or evaluation, and why MUSC uses a particular cut score for significant arousal in SVPA evaluations. (Appendix, pp. 44-46).

Respondent also asserts Dr. Gottfried "acknowledged it was hard to know what every lab that conducts this test does," citing Appendix p. 76, lines 1-5 as support. Her actual testimony, however, related to labs using the Real Child Voices (RCV) stimulus set, and she testified there are between 50 to 100 labs using the Limestone PPG system, which includes the RCV set. (Appendix, pp. 74-76). Any difficulty in knowing exactly what other PPG labs are doing is no different than the difficulty in knowing exactly how other DNA labs, MRI labs, blood testing labs

¹Petitioner craves reference to the Statement of Facts in the Petition for Writ of Certiorari and the Final Brief of Respondent before the court of appeals for detailed summaries of Dr. Gottfried's testimony supported by citation to the Appendix and Record on Appeal for context.

or any other scientific testing labs operate, and that does not render the DNA tests, MRIs, blood tests or scientific tests conducted by those labs unreliable as a matter of law. The undisputed evidence before Judge Sprouse established there are standard procedures for the many labs across the United States that use the PPG.

The contextual problems with Respondent's truncated version of the PPG evidence presented to Judge Sprouse are demonstrated by the Appendix citations in the Return. Within one paragraph, Respondent cites a few transcript lines from one page, skips to a few lines from another page, skips back to a few lines from a previous page, and then skips forward to testimony from twenty to thirty pages later. (Return, pp. 6-7). Again, the State craves reference to the Appendix, the State's Petition for a Writ of Certiorari, and the State's Final Brief before the court of appeals for a detailed summary, including context, of the PPG evidence presented. Significantly, Respondent ignores one very important fact – Dr. Gottfried's testimony regarding the PPG was undisputed.

Respondent persists in highlighting a purported lack of standardization of PPG testing, again taking Dr. Gottfried's testimony on that issue completely out of context. While Dr. Gottfried did acknowledge a standardization issue, she specifically related that issue to "international" standards, not standards used in United States labs. (Appendix, pp. 45-46).

Respondent then uses the fact that Dr. Gottfried now tailors the PPG stimulus sets to address a particular examinee's offense history as evidence that even her lab "lacked sufficient standardization regarding how the test was administered." Tailoring a particular test to the particular person being tested or the particular purpose of the test is hardly novel. The PPG used by Dr. Gottfried's lab has standardized stimulus sets, and Dr. Gottfried testified she now tailors the stimulus sets used during the test because a person's arousal to children "is less meaningful

to me if there's no indication the person has a pedophilic disorder." (Appendix, pp. 73-75). Thus, much like a blood test is tailored to look for the absence or presence of a particular thing, the PPG can be tailored to test for a particular sexual arousal.

Respondent also contends that Dr. Gottfried's testimony about the peer review and publications regarding the PPG was somehow deficient because "much of her testimony" related to her own publications and presentations, and it "lacked any detail about specifically what her presentations and publications discussed about the PPG test." Interestingly, Respondent concedes that "the PPG test has long been written about," but apparently faults Dr. Gottfried's testimony for failing to specifically discuss the contents of each and every study, publication, and presentation relating to the PPG, which she testified included over 100 published articles.² As to her personal publications and presentations, Dr. Gottfried testified about the studies she was involved with regarding the PPG, particularly the Real Child Voices stimulus set, and she presented the results of those studies at scientific conferences.³ (Appendix, pp. 39-40, 59-62, 77). Further, and more importantly, Dr. Gottfried discussed the on-going research and findings regarding the PPG throughout her pre-trial testimony. (Appendix, pp. 33-90).

Respondent's assertion that Dr. Gottfried's testimony regarding the quality control

² Respondent denigrates Dr. Gottfried's reference to a 2021 article in a publication entitled Nature, which he asserts was "irrelevant" to use of the PPG in this case. This assertion completely misses the point. Dr. Gottfried's testimony about the article established the medical community accepts the PPG as a reliable measure of men's sexual arousal. If the PPG is considered reliable for purposes of diagnosis and treatment of men's general sexual health, it is reliable for the purposes it is used in the MUSC lab - determination of deviant sexual arousal, which is directly relevant to the issue in this case.

³ Many of the more up-to-date articles and case law regarding the PPG are cited in the State's Final Brief before the court of appeals. (Final Brief of Respondent, pp. 19-22). In reversing Judge Sprouse, the court of appeals disregarded those articles and cases, instead citing outdated articles and case law. Respondent cited no contrary articles in his brief before the court of appeals, and he does not cite any in his Return.

procedures “was sparse” is simply inaccurate. To the contrary, Dr. Gottfried testified in detail about the procedures followed in all PPG tests administered in her lab, which are designed to ensure test accuracy as much as possible, and particularly minimize false positive results, and the procedures used in the MUSC lab are standard procedures implemented by the PPG manufacturer. (Appendix, pp. 42-45, 79-84).

Respondent’s argument that the court of appeals properly reversed Judge Sprouse is premised on the court of appeals’ reliance on Matter of Bilton, 432 S.C. 157, 851 S.E.2d 442 (Ct. App. 2020), and Matter of Daily, 443 S.C. 557, 905 S.E.2d 310 (Ct. App. 2024) (cert. pending). As a threshold matter, Bilton is inapplicable because it involved PPG testimony from an expert who was not trained in PPG technology, and she did not conduct the PPG at issue or even know who conducted it, which the court of appeals concluded made her testimony a “conduit” for hearsay. Bilton, 851 S.E.2d at 446.

Significantly, the court of appeals in Bilton expressly refrained from finding the PPG is unreliable, and acknowledged that PPG evidence might be admissible given proper foundation evidence regarding reliability, which the State submits is exactly what was presented to Judge Sprouse in this case. Further, Respondent cites dicta from the Bilton opinion that is based on outdated information regarding the state of PPG technology and as dicta, it is irrelevant to the issue currently before this Court.

As to Respondent’s reliance on Daily, the State contends the court of appeals decision in Daily suffers from the same fundamental errors that are present in this case: 1) failing to apply the appropriate standard of review; 2) disregarding undisputed evidence establishing the PPG test is a recognized and reliable scientific measure of deviant sexual arousal; and 3) disregarding other evidence in the record supporting the trial court’s findings and conclusions. The State filed a

Petition for Writ of Certiorari to the Court of Appeals seeking review by this Court based on those fundamental errors, which is pending.

Respondent's limited argument on the harmless error issue is unavailing. He asserts the PPG was more prejudicial than probative because Dr. Gottfried testified Respondent's test results showed a response to stimuli involving young children even though his offense pattern did not involve children. This assertion ignores the reason Dr. Gottfried found Respondent's reaction to those scenarios significant. She testified the scenarios, including those with children, involved coercion or sexual violence, "which is consistent with [Respondent's] reported offense behaviors." Thus, it was the coercion and sexual violence parts of the scenarios that Respondent found sexually arousing regardless of the victim's age, and that was significant because Respondent's sexual offending pattern involved coercion and sexual violence (rape). The substantial probative value of that information cannot be disputed.

Respondent then asserts "Dr. Gottfried relied heavily on the PPG and her testimony emphasized its importance in her conclusions." In support of that assertion, Respondent presents the same inaccurate version of Dr. Gottfried's statements regarding whether she could perform an evaluation without the PPG that the court of appeals relied on in its harmless error discussion. Just as the court of appeals stated, Respondent claims Dr. Gottfried testified she "could not conduct an evaluation without the PPG." As set forth in the State's Petition, however, the substance of Dr. Gottfried's testimony was she would not do an evaluation without the PPG because it was part of the lab's standard protocol that she created, rather than that she could not do an evaluation without it, and she intended to continue using the PPG even if she could not

testify about it in court.⁴ (Appendix, pp. 64-65). Therefore, Dr. Gottfried could do an evaluation without the PPG, but she chooses not to because she believes it is reliable and provides another data point in her multi-method evaluations. (Appendix, p. 66).

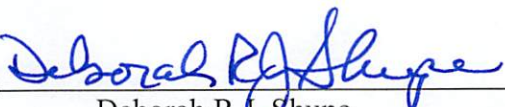
CONCLUSION

Based on the foregoing, and the matter set forth in the Final Brief of Respondent and Petition for Rehearing, the State respectfully petitions for a writ of certiorari to the court of appeals for this Court to review the court of appeals decision, correct the court of appeals' error by affirming Judge Sprouse's findings and conclusions regarding admissibility of the PPG testimony that were amply supported by the evidence, and reinstate Judge Sprouse's well-supported verdict finding Respondent is a sexually violent predator and committing him for long term control, care, and treatment pursuant to 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 29211-1549
(803) 734-3727

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⁴Indeed, she testified she did one SVPA evaluation without the PPG because the court would not compel the person to take the PPG. (Appendix, p. 64).