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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Chesterfield County
Michael S. Holt, Circuit Court Judge

IN THE MATTER OF THE CARE AND TREATMENT OF WILEY L. CHAPMAN,

APPELLANT.

Opinion No. 2024-UP-390 (S.C. Ct. App. Filed November 27, 2024)

APPELLATE CASE NO. 2022-000956

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

In the Matter of the Care and Treatment of Wiley L. Chapman, Appellant.

Appellate Case No. 2022-000956

Appeal From Chester County
Michael S. Holt, Circuit Court Judge

Unpublished Opinion No. 2024-UP-390
Submitted November 1, 2024 – Filed November 27, 2024

AFFIRMED

Appellate Defender David Alexander, of Columbia, for Appellant.

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

PER CURIAM: Wiley L. Chapman appeals his civil commitment to the Department of Mental Health pursuant to the South Carolina Sexually Violent Predator Act.[1] On appeal, Chapman argues the trial court erred in prohibiting him from cross-examining the State's expert about the outpatient treatment for sex offenders that she provided. We affirm pursuant to Rule 220(b), SCACR.

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[1] *See* S.C. Code Ann. §§ 44-48-10 to -170 (2018 & Supp. 2024).

We hold the trial court did not abuse its discretion in prohibiting Chapman from cross-examining the expert about the outpatient treatment program she provided through her clinic because the testimony was not relevant and the State did not open the door for the testimony to be introduced. *See In re Campbell*, 427 S.C. 183, 190, 830 S.E.2d 14, 18 (2019) ("In general, the admission or exclusion of evidence is a matter left to the sound discretion of the trial court, whose ruling will not be reversed on appeal absent an abuse of that discretion."); *id.* ("Likewise, the scope of cross-examination is largely within the trial court's discretion."); Rule 402, SCRE ("Evidence which is not relevant is not admissible."); § 44-48-30(1) (stating a sexually violent predator is defined as a person who: "(a) has been convicted of a sexually violent offense; and (b) suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment"). During direct examination, the expert stated before the jury that she offered an intensive outpatient treatment program. Chapman proffered the testimony he intended to elicit on cross-examination, including that it was a ten-week long program, utilized behavioral techniques such as aversion, and was mostly voluntary. Although the jury did not hear the details of the program, both the State's expert and Chapman's expert testified before the jury as to outpatient treatment being available. Therefore, to the extent that the availability of outpatient treatment was relevant to the jury's determination of whether Chapman needed to be confined, any details within the proffered testimony were redundant or unnecessary to the testimony already before the jury. *See In re Ettel*, 377 S.C. 558, 561, 660 S.E.2d 285, 287 (Ct. App. 2008) ("Evidence is relevant if it tends to establish or make more or less probable the matter in controversy."); *State v. Jenkins*, 322 S.C. 360, 364, 474 S.E.2d 812, 814 (Ct. App. 1996) ("[T]rial [courts] may impose reasonable limits on such cross-examination based on concerns about . . . interrogation that is repetitive or only marginally relevant."). Moreover, the State did not open the door to the expert testifying about the outpatient treatment program. The expert stated only that she offered an outpatient treatment program and did not discuss the efficacy of the program; thus, her testimony did not place a fact in issue. *See State v. Simmons*, 430 S.C. 1, 14, 841 S.E.2d 845, 852 (2020) ("A party may introduce inadmissible evidence in rebuttal when the opponent places a fact at issue."). Accordingly, under the facts of this case, the details of outpatient treatment were not relevant to the determination of whether Chapman was a sexually violent predator and the State did not open the door for the testimony to be introduced.

AFFIRMED.[2]

KONDUROS, GEATHERS, and TURNER, JJ., concur.

[2] We decide this case without oral argument pursuant to Rule 215, SCACR.

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Dec 12 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chesterfield County

Honorable Michael S. Holt, Circuit Court Judge

Opinion No. 2024-UP-390

IN THE MATTER OF THE CARE AND TREATMENT OF WILEY L. CHAPMAN,

APPELLANT.

APPELLATE CASE NO. 2022-000956

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Wiley L. Chapman petitions this Court for rehearing because the trial court's refusal to allow cross-examination on outpatient treatment was error. This Court held the testimony about outpatient treatment was not relevant. The availability of outpatient treatment is relevant to the "third element" of an SVP case—a defendant's likelihood of reoffending sexually unless confined for treatment. See Matter of Snow, 425 S.C. 544, 549, 823 S.E.2d 467, 470 (2019).

The availability of outpatient treatment for sex offenders makes it less likely that a defendant in an SVP case will reoffend unless confined for treatment. Dr. Gottfried expressed

her belief during the proffer that outpatient treatment works. Appellant was entitled to tell the jury his plan for not reoffending. It was important for the jury to know that the Attorney General's hired expert provided outpatient treatment.

This evidence bears directly on the question of whether a defendant is likely to reoffend, which the Attorney General told the jury in her opening was the central question in this case. Yet this Court held that cross-examining the State's hired gun expert about her intensive outpatient treatment program was not relevant. Relevancy is a low bar. "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE.

The evidence was not only relevant to the element of likelihood, it was also relevant for the evaluation of the hired gun's testimony against the DMH evaluator who opined appellant did not need to be committed. This Court also erred in finding that the State did not open the door to this questioning. During the cross-examination of the DMH expert, Dr. Gillen, the Attorney General grilled him about the viability of appellant's plan to not reoffend if he were released. R. 332, l. 17 – 338, l. 9. She asked if appellant's plan to live with his brother was viable because his brother did not believe appellant committed any crimes. R. 332, l. 17 – 338, l. 9. She asked if a treatment program run by a sheriff that appellant said he would enter existed and Dr. Gillen confirmed it did not. R. 332, l. 17 – 338, l. 9. She asked Dr. Gillen if he had spoken to the probation department and confirmed that other than registering as a sex offender, appellant would "have absolutely no restraints." R. 332, l. 17 – 338, l. 9. She questioned Dr. Gillen about whether appellant could actually live at the address he gave SCDC as his discharge address. R. 332, l. 17 – 338, l. 9. She asked:

> So, let's move on—so we have an outpatient treatment program for release that doesn't exist. We have a brother who does not believe he even committed these offenses and will not hold him accountable. We have another alleged sister who won't even admit she's related to him. Do you think these are supportive and appropriate community supports?

R. 336, l. 18 – 24. After Dr. Gillen's answer acknowledging problems with appellant's release plans, the Attorney General asked, "And those are risk factors for re-offense, correct?" R. 337, l. 16. After attacking appellant's release plan by way of attacking Dr. Gillen, it made questioning the hired expert vital on this point.

The Attorney General argued that appellant could not even proffer the questions he wanted to ask the hired expert. R. 168, l. 4 – 8. Dr. Gottfried herself testified that she offered outpatient treatment on direct-examination. R. 76, l. 19 – 77, l. 3. That statement by the expert alone opened the door to the specifics of outpatient treatment.

The Attorney General attempted to frame the issue before the trial court as the type of treatment inside the SVP program is not relevant. Appellant agrees to a certain extent. But the question of a defendant's plan for not reoffending, which can include outpatient treatment, is of immense relevance and importance. Presumably, Dr. Gottfried would not offer outpatient treatment unless it worked and reduced the likelihood of reoffense. Appellant was entitled to show the depth of Dr. Gottfried's treatment program to show the jury what was available.

This Court should look at the the detailed way in which the Attorney General attacked appellant's plan for not reoffending. R. 332, l. 17 – 338, l. 9. The Court should also look at the Attorney General's closing argument. She denigrated the effect of treatment in the prisons. R. 373, l. 22 -25. She called Dr. Gillen inexperienced. R. 376, l. 15 – 17. She ended by saying appellant was "likely to sexually reoffend if released and that he should be committed to a secure

environment for long term control, care, and treatment." R. 378, l. 16 – 19. In her rebuttal closing, she attacked appellant's plan to not reoffend. R. 388, l. 18 – 389, l. 7.

Had the jury heard about Dr. Gottfried's "intensive" outpatient treatment program, it could have better evaluated the two expert opinions. Dr. Gottfried's belief that that program was successful and "going well" would have bolstered Dr. Gillen's opinion that appellant did not need to be confined. R. 187, l. 22 – 189, l. 7. This Court incorrectly evaluated the relevance and the door-opening questions. In this case with dueling experts, the error cannot be harmless. This Court should grant rehearing, grant oral argument, and reverse.

David Alexander
Deputy Chief Attorney for Capital Appeals

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ATTORNEY FOR APPELLANT

This 12th day of December, 2024.

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Dec 12 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA

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Appeal from Chesterfield County

Honorable Michael S. Holt, Circuit Court Judge

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APPELLANT.

APPELLATE CASE NO. 2022-000956

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing 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 12th day of December, 2024.

David Alexander
Deputy Chief Attorney for Capital Appeals

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ATTORNEY FOR APPELLANT

The South Carolina Court of Appeals

In the Matter of the Care and Treatment of Wiley L. Chapman, Appellant.

Appellate Case No. 2022-000956

ORDER

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

_____ J.

_____ J.

_____ J.

Columbia, South Carolina

cc:
Deborah R.J. Shupe, Esquire
Alan McCrory Wilson, Esquire
David Alexander, Esquire
The Honorable Michael S. Holt

FILED
Jan 30 2025