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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.

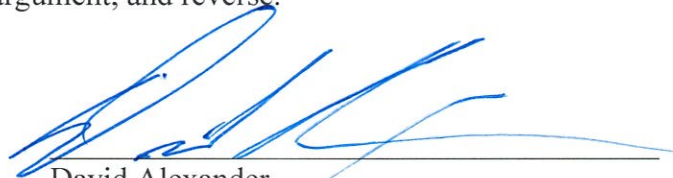
The Attorney General argued that appellant could not even proffer the questions he wanted to ask the hired expert. R. 168, l. 4 – 8. Dr. Gottfried herself testified that she offered outpatient treatment on direct-examination. R. 76, l. 19 – 77, l. 3. That statement by the expert alone opened the door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



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ATTORNEY FOR APPELLANT

This 12th day of December, 2024.

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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.



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ATTORNEY FOR APPELLANT

From: [Stock, Chris](#)
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Subject: 2022-000956 In The Matter of Wiley L. Chapman - Petition for Rehearing
Date: Thursday, December 12, 2024 5:04:00 PM
Attachments: [2022-000956 In The Matter of Wiley L. Chapman - Petition for Rehearing.pdf](#)
[2022-000956 In The Matter of Wiley L. Chapman - Petition for Rehearing - AG Cover Letter.pdf](#)

Ms. Shupe,

Please find attached for service the Petition for Rehearing in the matter of Wiley L. Chapman's appeal which will be filed with the Court of Appeals today.

If you have any questions, please let me know.

Thank you,

Chris Stock
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